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S. R. A., Markets 1. Issued January 19, 1915.

U. S. DEPARTMENT OF AGRICULTURE,

OFFICE OF MARKETS AND RURAL ORGANIZATION.

CHARLES J. BRAND, Chief.

SERVICE AND REGULATORY ANNOUNCEMENTS.

ESTABLISHMENT AND PROMULGATION OF OFFICIAL COTTON STANDARDS OF THE UNITED STATES.

PERMISSIVE OFFICIAL COTTON GRADES REPLACED.

The act making appropriation to the Department of Agriculture for the fiscal year ending June 30, 1909, contained an item for the express purpose of enabling the Department of Agriculture to undertake systematic work in cotton standardization, and carried authority to establish an official standard for the nine grades of white American cotton. Subsequent appropriation acts provided for the continuation and extension of the work in cotton standardization, and the distribution by sale of copies of the standards for grade, prepared and approved by the department under the act referred to in February, 1909.

When the preparation of this permissive standard was undertaken, the Secretary of Agriculture called together a committee of nine men, prominent in various branches of the cotton trade, with three experienced classers, from the New York, New Orleans, and Dallas markets. Several of these men brought limited quantities of material for making types, and the department secured cotton for this purpose from various portions of the belt, as well as copies of the standards of many of the cotton exchanges, both American and foreign. This committee, from the material at hand, prepared the official grades which were approved by the Secretary of Agriculture, but their adoption and use was wholly voluntary, no statute having made them obligatory upon any portion of the industry. No power was vested in the Secretary of Agriculture to apply

these grades in any way, or to entertain or determine any disputes in connection with their application. These official grades were, therefore, never formally promulgated, nor was any campaign undertaken to secure their adoption and use by the trade.

Under the circumstances, it is not strange that these permissive standards never came into general commercial use, especially as it had become evident, upon subsequent investigation, that the standards for the low grades were typical of an insufficient proportion of the low grades of the eastern part of the cotton belt. The generally expressed opinion of the trade was that the lower grades were "too full," and that the cotton used in the original standards for these grades was of a brighter color than occurs in these grades east of the Mississippi River. In short, most of the cotton men of the Southeast have insisted that all of the original types for this standard appeared to them to have been made of characteristic western cotton.

Possibly for the reason that the official grades were considered higher or "fuller" than any previously recognized by the trade, the spinning interests of this country made a rather concerted effort to make them the basis of their purchases. Shippers from the Southeast, however, have found it necessary to qualify their offers of low grades by the frank statement that they could not match the color of the official standard for those grades.

A majority of the organized spot markets of the country formally adopted the permissive official grades, but field investigations of the department indicate that they were made the basis of a comparatively small part of the business between established cotton merchants in the South and either their American or foreign customers. The net result, therefore, of the issuance of these permissive standards, so far as the actual trade in spot cotton was concerned, was to add one more standard of classification to the numerous standards already in use.

During the three years that these official grades were before the public, it became evident that the cotton trade of this country was not likely voluntarily to unite in their use, while the action of the American and European cotton exchanges at Liverpool June 2 and 3, 1913, in preparing and recommending to the trade of the world a new international standard which differed widely from our permissive official grades, showed plainly that the latter would never be acceptable as a universal standard.

The action taken at Liverpool was followed by the adoption of a resolution, in May, 1914, by a convention assembled at Augusta, Ga., at which nearly all the exchanges of this country were represented, asking the Department of Agriculture to adopt the proposed international standards. This action was equivalent to an expression of opinion that the permissive standards previously issued as official were unsuited to universal use. The department inclined to share this opinion and believed it unwise to attempt to secure general adoption of a standard which was more exacting than those of the great foreign consuming markets, or to enforce such a standard upon our domestic cotton industry. The foregoing facts and considerations convinced the Secretary of Agriculture that it would be inadvisable to adopt or change, and subsequently promulgate, under the terms of the United States cotton futures act, the permissive standard issued in 1909.

In order that there might be no question as to just what changes were made or just what modifications were intended, it was decided to replace entirely the official grades so that the trade might know definitely that no official grade or type issued prior to the date of promulgation of the new official cotton standards of the United States retained any official character or force from and after that date. The only safe procedure, therefore, for holders of copies of the official grades previously issued is to replace them with standards adopted and

promulgated under the United States cotton futures act. The Secretary of Agriculture assigned the administration of this act to the Chief of the Office of Markets and Rural Organization.

The objections to the permissive grades, and the reasons which prevented their general adoption and use, were well understood by the technical cotton force of the department, which through its various activities had acquired a comprehensive viewpoint of the cotton situation. The department had in hand a great wealth of material for purposes of comparison and type making, the primary market survey, made by the Office of Markets in 1913, covering the entire belt, having brought together such a representative and comprehensive array of samples as was probably never before collected. The proposed international standard was seriously considered, but was found to contain certain tinged samples, introducing illogical irregularities which precluded the possibility of its promulgation for use under the United States cotton futures act. This act contemplates separate types for tinged and stained cotton, and provides, under certain conditions, for determination of dispute as to grade, staple, or quality by the Secretary of Agriculture, when cotton (of the grades established by him) is tendered in settlement of future contracts. It is imperative that such appeals be determined by the application of standards under which it will be possible to make uniform and consistent arbitrations.

OFFICIAL COTTON STANDARDS FOR GRADE PREPARED, ESTABLISHED, AND PROMULGATED.

The department therefore secured the temporary services of some of the best classers on the New York and New Orleans exchanges to assist its technical force in perfecting a standard which should meet the valid objections to the old official grades and yet avoid the introduction of anything which should be classed as tinged or spotted cotton. The result of the combined labors of this force was a set of standards believed to represent the white cotton of an average American crop more closely than any standard previously prepared.

As a test of the extent to which this standard differed from the official grades, several thousand bales of low-grade cotton which had been classed on the old official grades were reclassed by the same men against the new standard, and it appears from the result that about 12 per cent more of the cotton crop can be classed by the new official cotton standards of the United States than by the old official grades.

The Secretary of Agriculture therefore approved the adoption of and established and promulgated these standards for the nine grades of cotton: Middling Fair, Strict Good Middling, Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary.

For the information of all interested persons section 9 of the United States cotton futures act, which confers the authority under which this action has been taken, is quoted below:

That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form, which, for the purposes of this act, shall be known as the "official cotton standards of the United States," and to adopt, change, or replace the standard for any grade of cotton established under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto: *Provided*, That any standard of any cotton established and promulgated under this act by the Secretary of Agriculture shall not be changed or replaced within a period less than

one year from and after the date of the promulgation thereof by the Secretary of Agriculture: *Provided further*, That, subsequent to six months after the date section three of this act becomes effective, no change or replacement of any standard of any cotton established and promulgated under this act by the Secretary of Agriculture shall become effective until after one year's public notice thereof, which notice shall specify the date when the same is to become effective. The Secretary of Agriculture is authorized and directed to prepare practical forms of the official cotton standards which shall be established by him, and to furnish such practical forms from time to time, upon request, to any person, the cost thereof, as determined by the Secretary of Agriculture, to be paid by the person requesting the same, and to certify such practical forms under the seal of the Department of Agriculture and under the signature of the said Secretary, thereto affixed by himself or by some official or employee of the Department of Agriculture thereunto duly authorized by the said Secretary.

On December 15, 1914, after the standard had been formally submitted and carefully inspected by him, orders of adoption and promulgation replacing the entire set of permissive official grades were issued by the Secretary of Agriculture. The correspondence and copies of the orders are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF MARKETS AND RURAL ORGANIZATION,
Washington, D. C., December 15, 1914.

Hon. D. F. HOUSTON,
Secretary of Agriculture.

SIR: There is submitted herewith for your inspection and consideration a set of proposed standards for white American cotton of the following grades, nine in number: Middling Fair, Strict Good Middling, Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary. These have been perfected by the force of technical cotton men under my direction, as indicated in my memorandum to you of December 4.

I recommend that these standards be established and promulgated by you as the official cotton standards of the United States for the grades named, in accordance with the authority conferred upon you by section 9 of the United States cotton futures act of August 18, 1914 (Public, No. 174).

Very respectfully,

CHARLES J. BRAND, *Chief.*

Approved:
F. G. CAFFEY, *Solicitor.*

DEPARTMENT OF AGRICULTURE,
Washington, D. C., December 15, 1914.

Mr. CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization,
United States Department of Agriculture.

SIR: Replying to your letter to me of this date, I wish to say that I have inspected the proposed standards for the nine grades of cotton, submitted to me therewith, that I have approved them, and have issued the accompanying orders of establishment and promulgation. In accordance with these orders the proposed standards submitted by you have become this day the official cotton standards of the United States for the following grades: Middling Fair, Strict Good Middling, Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary.

I suggest that you take immediate steps to acquaint the cotton trade and the public generally with the exact nature of these standards to the end that they may come, as rapidly as possible, into commercial use, in order that I may be able to designate, at the earliest practicable date, which are the bona fide spot markets for the purposes of the United States cotton futures act.

I approve the steps which you have already taken toward the preparation of a large number of copies of practical forms of these standards, and wish you to make every effort to perfect additional copies, as rapidly as possible, until the needs of the department and the demands of the cotton industry have been fully met.

Respectfully, D. F. HOUSTON, *Secretary.*

PUBLIC NOTICES ESTABLISHING NINE OFFICIAL COTTON STANDARDS OF THE UNITED STATES FOR GRADE.

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Middling Fair, as represented by the attached set of samples, marked

ORIGINAL

OFFICIAL COTTON STANDARDS OF THE UNITED STATES

GRADE

MIDDLING FAIR

and do order that this standard replace the standard for the grade of cotton designated Middling Fair, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Strict Good Middling, as represented by the attached set of samples, marked

ORIGINAL

OFFICIAL COTTON STANDARDS OF THE UNITED STATES

GRADE

STRICT GOOD MIDDLING

and do order that this standard replace the standard for the grade of cotton designated Strict Good Middling, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton

futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Good Middling, as represented by the attached set of samples, marked

ORIGINAL
OFFICIAL COTTON STANDARDS OF THE UNITED STATES
GRADE
GOOD MIDDLING

and do order that this standard replace the standard for the grade of cotton designated Good Middling, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Strict Middling, as represented by the attached set of samples, marked

ORIGINAL
OFFICIAL COTTON STANDARDS OF THE UNITED STATES
GRADE
STRICT MIDDLING

and do order that this standard replace the standard for the grade of cotton designated Strict Middling, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Middling, as represented by the attached set of samples, marked

ORIGINAL
OFFICIAL COTTON STANDARDS OF THE UNITED STATES
GRADE
MIDDLING

and do order that this standard replace the standard for the grade of cotton designated Middling, as established by the Secretary of Agriculture under

the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Strict Low Middling, as represented by the attached set of samples, marked

ORIGINAL

OFFICIAL COTTON STANDARDS OF THE UNITED STATES

GRADE

STRICT LOW MIDDLING

and do order that this standard replace the standard for the grade of cotton designated Strict Low Middling, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Low Middling, as represented by the attached set of samples, marked

ORIGINAL

OFFICIAL COTTON STANDARDS OF THE UNITED STATES

GRADE

LOW MIDDLING

and do order that this standard replace the standard for the grade of cotton designated Low Middling, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Strict Good Ordinary, as represented by the attached set of samples, marked

ORIGINAL
OFFICIAL COTTON STANDARDS OF THE UNITED STATES
GRADE
STRICT GOOD ORDINARY

and do order that this standard replace the standard for the grade of cotton designated Strict Good Ordinary, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

DECEMBER 15, 1914.

Pursuant to the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, do hereby establish a standard for the grade of cotton designated Good Ordinary, as represented by the attached set of samples, marked

ORIGINAL
OFFICIAL COTTON STANDARDS OF THE UNITED STATES
GRADE
GOOD ORDINARY

and do order that this standard replace the standard for the grade of cotton designated Good Ordinary, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. HOUSTON, *Secretary of Agriculture.*

PUBLIC NOTICE PROMULGATING THE OFFICIAL COTTON STANDARDS OF THE UNITED STATES FOR GRADE.

DECEMBER 15, 1914.

Notice is given that by virtue of the authority vested in the Secretary of Agriculture by section 9 of an act of Congress entitled "An act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," known as the United States cotton futures act, approved August 18, 1914 (Public, No. 174), I, David F. Houston, Secretary of Agriculture, have, on this fifteenth day of December,

1914, established, and do hereby promulgate, standards for nine grades of cotton designated as Middling Fair, Strict Good Middling, Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary, to be known as the official cotton standards of the United States, as represented by sets of samples for each such grade deposited in my office in the city of Washington, D. C., and marked, respectively, by their grade names, and designated "Original official cotton standards of the United States"; and do order that said standards hereby replace the standard for the grades of cotton designated Middling Fair, Strict Good Middling, Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary, as established by the Secretary of Agriculture under the act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine (Thirty-fifth Statutes at Large, page two hundred and fifty-one), and acts supplementary thereto.

Witness my hand and the official seal of the Department of Agriculture this fifteenth day of December, 1914.

D. F. Houston, *Secretary of Agriculture.*

PRICE, DISTRIBUTION, AND INSTRUCTIONS AS TO ORDERING COPIES OF THE OFFICIAL COTTON STANDARDS.

The preparation of a large number of copies of the new standard was begun immediately, and these practical forms or copies will be supplied to all applicants as rapidly as possible at the cost of their preparation, which has been determined as $20 per set of nine grades.

A large number of requests for these copies have been received, but as the cotton futures act requires the use of this standard in transactions in section 5 contracts after February 18, 1915, preference must be given those applicants whose business is connected with the future exchanges. The bona fide spot markets to be designated under the act can include only those which are actually using these standards. The department, therefore, will give second consideration to the requests of persons whose business is most closely connected with the spot exchanges and the larger spot markets of the country.

In these types or practical forms the methods of physical preparation, of preservation, identification, labeling, and certification heretofore developed in connection with the permissive official grades will be closely followed. Each grade box contains 12 samples or types, showing the permissible variation within the grade, and so secured as to present to the eye curved surfaces which do not touch the cover of the box. A full-size photograph, secured within the cover, shows accurately the position and relative size of the particles of visible foreign matter in the cotton as originally certified. The photograph can not show the color. The seal of the Department of Agriculture, certifying to the grade of the cotton, is embossed upon each photograph, and the signature of the Secretary of Agriculture attests the authenticity of the certificate and standard.

Purchasers of these standards must hold them subject to the inspection of the Secretary of Agriculture, who will condemn and cancel or remove the certificate and seal from any of the practical forms found to misrepresent the standard.

To secure a perfect understanding of the conditions under which these practical forms are issued, the order blank which is given in full below has been prepared and will be sent upon application to all who desire copies of these standards. An explanatory letter, copy of which follows, accompanies each order blank sent out:

UNITED STATES DEPARTMENT OF AGRICULTURE,
OFFICE OF MARKETS AND RURAL ORGANIZATION,
Washington, D. C.

DEAR SIR: A limited number of copies of the official cotton standards of the United States established and promulgated in accordance with the terms of the United States cotton futures act are now ready for distribution. These copies are in the shape of practical forms which are duplicates or as exact representations as can be made of the originals retained by the department. If you desire a full set of these standards, you are invited to fill out the accompanying request and return it to this office. Indicate the character of your remittance by erasures.

The official grades heretofore issued have been entirely replaced by the new standard. If you have a full set of these old types, you may crate and forward them to this office by express, collect. As the boxes and cartons cost substantially $5 per set, their return will reduce the cost of the preparation of a new set to this extent, and your remittance need be for only $15. If you have no set of the old official grades, make your remittance for the full amount, $20, and strike out in your application the words "An old set has also been returned."

Very truly yours,

[Signature.]

ORDER FORM FOR COPIES OF THE OFFICIAL COTTON STANDARDS OF THE UNITED STATES.

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Mr. CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization,
United States Department of Agriculture.

DEAR SIR: Application is hereby made, under the terms of section 9 of the United States cotton futures act, for a set of practical forms of the official cotton standards of the United States for the nine grades of white cotton: Middling Fair, Strict Good Middling, Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary.

Inclosed you will find [bank draft, post-office or express money order, or certified check] payable to "Disbursing Clerk, Department of Agriculture," for $____. An old set has also been returned.

That these practical forms may always serve the purposes for which they are prepared, it is agreed that they will be held subject to the inspection of the United States Secretary of Agriculture or his representative on any business day between the hours of 9 a. m. and 4 p. m.; that the signature of the Secretary of Agriculture or the certificate of grade accompanying any practical form may be canceled or removed if, in the judgment of himself or his representative, the practical form for any reason misrepresents the official cotton standard of the United States, or if any photograph accompanying such form has been altered or mutilated; and that such practical forms will be held and used subject to the rules and regulations of said Secretary of Agriculture.

Very truly yours,

[Applicant.]

[Address.]

Shipping instructions:

INFORMATION REGARDING ORDERS FOR FRACTIONAL SETS.

Many dealers in, and users of, raw cotton, including merchants, brokers, and especially spinners, require for their purposes only fractional parts of the complete series of nine grades. Some desire one grade only, usually Middling; others need Middling and the adjacent half grades, or the full grades above and below—Good Middling and Low Middling. Already some orders have been received for fractional sets. The applicants in all cases have been informed that on account of the demand for full sets in the future and spot markets the filling of their orders would necessarily be delayed for some time. Every effort will be made to supply broken sets as soon as possible, but it is unlikely that it can be done until after February 18, the date on which the United States cotton futures act goes into effect. Due notice will be given the trade when distribution of fractional sets is to begin.

ADDITIONAL COPIES

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United States Department of Agriculture,

OFFICE OF MARKETS AND RURAL ORGANIZATION.

CHARLES J. BRAND, Chief.

SERVICE AND REGULATORY ANNOUNCEMENTS.

DETERMINATION OF DISPUTES ON QUESTIONS OTHER THAN GRADE ARISING IN CONNECTION WITH THE FIFTH SUBDIVISION OF SECTION 5 OF THE UNITED STATES COTTON-FUTURES ACT.

DEFINITIONS OF UNTENDERABLE KINDS AND CONDITIONS OF COTTON.

The seventh subdivision of section 5 of the United States cotton futures act of August 18, 1914, provides that any dispute arising between the person making a tender and the person receiving the same as to the quality or the grade or the length of staple of any cotton tendered under a contract made in compliance with section 5 of the act may be referred to the Secretary of Agriculture for determination. In accordance with the authority contained in section 9 of the act, official cotton standards of the United States for nine grades, from Good Ordinary to Middling Fair, were established and promulgated by the Secretary of Agriculture on December 15, 1914, as described in Service and Regulatory Announcements No. 1 of this office, issued January 19, 1915. To date it has not been found possible to establish standards for other qualities and conditions of cotton, largely on account of lack of sufficient time and want of suitable material with which to do the work. Furthermore, it undoubtedly would be wholly inadvisable and impracticable to attempt to express in the practical form of standards certain of the kinds and conditions that are prohibited from being delivered in accordance with the terms of the fifth subdivision of section 5, which requires that contracts in order to be exempt from tax under that section must, among other things, provide as follows:

That cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is "gin cut" or reginned, or cotton that is "repacked" or "false packed" or "mixed packed" or "water packed," shall not be delivered on, under, or in settlement of such contract.

In deciding disputes the Secretary of Agriculture necessarily will determine, by definition for his own guidance, the meaning of such terms as are contained in this subdivsion. Without such definitions it would prove difficult to reach uniform and just decisions as to the qualities of cotton referred to him in cases of dispute. However, except for the sole purpose of these disputes, the definitions he applies will not be authoritative or binding as to the meanings Congress intended to attach to the terms in question. The final and authoritative determination of their meanings must rest with the courts, although they, in cases of doubt, may favor the interpretation

placed upon them by the Secretary of Agriculture. A careful study of the trade application of the terms "gin cut," "reginned," "repacked," "false packed," "mixed packed," "water packed," and others used in subdivision 5 of section 5 of the act leads to the conclusion that the most nearly universally accepted commercial meanings of these terms are as follows:

Gin-cut cotton.

Gin-cut cotton is cotton that shows damage in ginning, through cutting of the saws, to an extent that reduces its value more than two grades, said grades being of the official cotton standards of the United States.

Gin-cutting of a less extent than that mentioned above which reduces the cotton below the value of Good Ordinary would render the cotton untenderable though the extent of injury were less than that described, as the fifth subdivision of section 5 states specifically that cotton the value of which is reduced below that of Good Ordinary shall not be delivered on, under, or in settlement of a contract.

Reginned cotton.

Reginned cotton is such as has passed through the ginning process more than once, also such cotton as after having been ginned is subjected to a cleaning process and then baled.

Repacked cotton.

Repacked cotton will be deemed to mean factors', brokers', and all other samples; also "loose" or miscellaneous lots collected together and rebaled.

False packed cotton.

Cotton bales will be deemed false packed whenever containing substances entirely foreign to cotton, or containing damaged cotton in the interior with or without any indication of such damage upon the exterior; also when plated (that is, composed of good cotton upon the exterior and decidedly inferior cotton in the interior) in a manner not to be detected by customary examination; also when containing pickings or linters worked into them.

Mixed packed cotton.

Mixed packed cotton shall be deemed to mean such bales as show a difference of more than two grades between samples drawn from the heads, top and bottom sides of the bale, or when such samples show a difference in color exceeding two grades in value, said grades being of the official cotton standards of the United States.

Water packed cotton.

Water packed cotton shall be deemed to mean such bales as have been penetrated by water during the baling process, causing damage to the fiber, or bales that through exposure to the weather or by other means, while apparently dry on the exterior, have been damaged by water in the interior.

Cotton of perished staple.

Cotton of perished staple is such as has had the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure, either to the weather before picking or after baling, or to heating by fire, or on account of water packing, or through other causes.

Cotton of immature staple.

Cotton of immature staple is such as has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

Cotton of seven-eighths inch staple.

After investigation it is likely that a standard for cotton seven-eighths of an inch in length of staple will be issued. In the meantime, the examiners authorized to hear disputes will pull the cotton so that the ends will be squared off fairly well without unduly reducing the bulk of the drawn sample. When the measure is applied a fair quantity of the cotton must remain in order to show that the sample has not been pulled too fine before measuring. When thus pulled and measured as cotton experts are accustomed to do its fair average length shall be not less than seven-eighths of an inch, in order that the cotton be tenderable under a contract made in compliance with section 5 of the act.

WORKING TYPES FOR GUIDANCE IN THE DETERMINATION OF TENDERABILITY OF TINGES AND STAINS PRIOR TO THE ESTABLISHMENT OF STANDARDS FOR COLOR.

In accordance with the fifth subdivision of section 5, quoted as a whole above, every contract of sale of cotton for future delivery, in order to be exempted from taxation thereunder, must provide that cotton shall not be delivered on, under, or in settlement of such contract if it be below the grade of Low Middling, if tinged, or below the grade of Middling, if stained, the grades mentioned being of the official cotton standards of the United States.

Up to the present time it has not been possible, largely because of a lack of suitable type material, and for some time in the future it will be impossible for the Secretary of Agriculture to establish and promulgate standards of color of cotton, as is clearly contemplated by section 9 of the act, which states—

That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards of cotton by which its quality or value may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form.

Practically all of the spot and future exchanges of the country, as well as a large number of individual firms, have been requested to submit to the department types representing their judgment of the qualities of Low Middling tinged and Middling stained. After an examination of the material submitted, which was very meager, the exchanges and individual firms were asked to select bales representing certain of the types which the cotton experts of the department believed certainly should be included in any box of type for these qualities.

Although this search for material was inaugurated fully three months ago, and agents from the department also have been sent to the field to select bales, sufficient cotton of typical character for standardization purposes has not been forthcoming. Hence, it has been found impossible to establish a standard of color with such care and precision as would be necessary in order to facilitate cotton transactions in the best way. It has, therefore, been decided not to attempt immediately to establish and promulgate standards of color, but, for the convenience of the department in passing on disputes, to issue three boxes of type—one each for Low Middling blue tinged, Low Middling yellow tinged, and Middling yellow stained. In order to facilitate in the exchanges the work of classification of cotton proposed for tender on contract, the department will furnish to each of the future exchanges, and as soon as possible also to the bona fide spot markets designated by the Secretary of Agriculture, a set of these types. This will be done with the distinct understanding that they are not issued as standards, but wholly for temporary use as guides, and with the further agreement that all shall be returned to the department when the standard is finally established, or whenever the department may find it necessary to recall them for its purposes.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915

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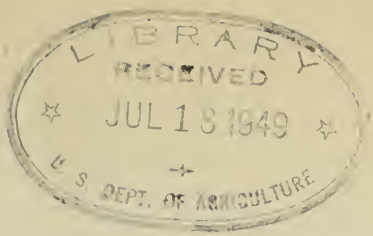

S. R. A.—Markets 3. Issued March 2, 1915.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF MARKETS AND RURAL ORGANIZATION.
CHARLES J. BRAND, Chief.

SERVICE AND REGULATORY ANNOUNCEMENTS.

No. 3.

PUBLICATION OF RULES AND REGULATIONS.

1.

The Secretary of Agriculture prescribed and published under date of February 10 the rules and regulations of this department under the United States cotton futures act of August 18, 1914. (Office of the Secretary, Circular 46.) For the information of the exchanges and for the public at large an advance copy was sent by the Department of Agriculture to the future markets and to all of the spot markets so designated within the meaning of the act, to be displayed on their bulletin boards.

PUBLICATION OF AMENDMENTS.

2.

Amendment 1 to the rules and regulations was issued February 17, effective immediately, as follows:

"In regulation 3, section 1, strike out the words 'Waco, Tex.' "

Amendment 2 was issued February 18, effective on and after that date, as follows:

"In regulation 3, section 1, strike out the words 'Fall River, Mass.'

"In regulation 3, section 2, strike out the words 'Fall River, Mass.' "

ORDER OF THE SECRETARY.

3.

The Secretary of Agriculture, under the date of February 15, issued the following order to his staff:

Memorandum No. 119.—Forbidding certain officers and employees of the Department of Agriculture to speculate in cotton and improperly to disclose confidential information secured in connection with the administration of the United States cotton futures act.

In view of the fact that the Department of Agriculture in administering the United States cotton futures act of August 18, 1914 (38 Stat., 693), will secure information of a confidential character of possible value for speculating in cotton, much of which will frequently be given upon the promise of the department that the individual or collective transactions of the person concerned will not be made public in such way or at such time as will disclose any facts that may injure his business or give a business advantage to his competitors, it is thought desirable at the outset to safeguard the information against improper use. The following order is therefore issued, effective this day:

All officers and employees of the Office of Markets and Rural Organization, and all other officers and employees of the Department of Agriculture who may be connected in any way with the administration of the act, are forbidden, either directly or indirectly—

1. To deal in, or to have or acquire any interest in, any contract for the purchase or sale of cotton for future delivery;

2. To deal in, or to have or acquire any interest in, any spot cotton, without the previous written consent of the Secretary of Agriculture, secured upon application submitted through the chief of the bureau, office, or division in which the applicant is employed; and

3. To use for any other than official purposes, or to disclose, or to authorize, aid, or assist in disclosing, to any person or persons, other than officers or employees of the department authorized to receive the same in the line of their duties, any confidential information voluntarily furnished to the department, in the course of the administration of the act, except that such information may be given out to the public, by authorized officers of the department, for such purposes, to such extent, in such manner, and at such times as may not be at variance with the terms upon which the same was furnished.

This memorandum shall not be deemed, or construed to impose, any limitation upon the exercise of the authority of the Secretary of Agriculture "to publish from to time the results of investigations made in pursuance of" the act, as directed by section 20 thereof.

OPINIONS OF GENERAL INTEREST REGARDING QUESTIONS ARISING UNDER THE UNITED STATES COTTON FUTURES ACT.

LETTERS.

4.

GENTLEMEN: You ask my opinion as to whether a transaction described as follows comes within the scope of the United States cotton futures act of August 18, 1914 (38 Stat., 693):

A buys 100 bales of actual cotton here, instructs our Liverpool firm to sell 100 bales of futures in the Liverpool market by cable as hedge against same purchase; the cotton is then consigned to our Liverpo l firm, A being reimbursed for the cost of the cotton by 60 days' draft on our Liverpool firm, when the cotton is sold in Liverpool, the hedge is bought in, and the transaction finally closed.

Section 11 of the act imposes upon each order transmitted, or directed or authorized to be transmitted, by any person within the United States, for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, a tax at the rate of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract. It further contains a proviso which exempts such orders from the tax if the contracts made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section 5, or with all the conditions specified in section 10 of the act.

The transaction you describe involves the transmission from the United States to Liverpool of an order to sell as a hedge 100 bales of cotton grown in the United States for future delivery on the Liverpool Cotton Exchange. This order would, therefore, on and after February 18, 1915. be subject to the tax imposed by section 11 of the act, unless it is exempted under the proviso to that section.

The Liverpool exchange has not yet adopted a form of contract which would meet either set of the requirements specified in the proviso. It is unnecessary in this connection to consider orders for contracts complying with the conditions of section 10 of the act, since they relate only to specific contracts for future delivery made on

the exchanges, which are not adapted to hedging and are not involved in the transaction you describe.

If the Liverpool exchange does not adopt a form of contract complying with the conditions specified in subdivisions 1 to 6, inclusive, of section 5 of the act, it appears that on and after February 18, 1915, you will not be able to transmit orders for hedges on that exchange respecting cotton grown in the United States without paying the tax of 2 cents a pound imposed by section 11. However, if the Liverpool exchange should adopt that form of contract, it appears that you may send orders abroad for hedges therein on that exchange, and be exempt from the tax by virtue of the proviso to section 11.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

FEBRUARY 12, 1915.

5.

SIR: You ask my opinion as to whether in case of a sale by you after February 18, 1915, of 500 bales Liverpool Fully Middling cotton for shipment from the United States to Liverpool during March, 1915, you would be liable to the tax imposed by the United States cotton futures act of August 18, 1914 (38 Stat., 693).

Section 11 of the act provides as follows:

That upon each order transmitted, or directed or authorized to be transmitted, by any person within the United States for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, there is hereby levied an excise tax at the rate of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract: *Provided*, That no tax shall be levied under this Act on any such order if the contract made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section five, or with all the conditions specified in section ten of this Act, except that the quantity of the cotton involved in the contract may be expressed therein in terms of kilograms instead of pounds.

The tax imposed by this section is neither on the sale of cotton for shipment abroad nor on its shipment abroad. It is levied on the order transmitted from the United States to a foreign country for the making of a contract of sale of cotton grown in the United States, and then only in case such contract involves the future delivery of the cotton and is made or to be made at, on, or in a foreign exchange, board of trade, or similar institution or place of business. If the contract for which the order is transmitted is either not for the sale of cotton grown in the United States, or does not involve its future delivery, or is not made or to be made at, on, or in an exchange, board of trade, or similar institution or place of business in a foreign country, then the order does not come at all within the scope of the taxing provisions of section 11.

If the order transmitted abroad does come within the scope of the taxing provisions of section 11 of the act, then it may be exempted from this tax by virtue of the proviso to that section in either one of two classes of cases: (1) When the contract made in pursuance of the order complies with the conditions specified in the first to sixth subdivisions, inclusive, of section 5 of the act; and (2) when it complies with all the conditions specified in section 10 of the act.

You will note that section 5 of the act relates to basis contracts for future delivery of cotton, such as hedges entered into on an exchange, board of trade, or similar institution or place of business, while section 10 relates to contracts of sale of specific cotton for future delivery entered into thereon.

Without a more detailed description of the transaction referred to in your letter, it is difficult to say whether or not it would in any of its phases come within the scope of section 11 of the act. If it were merely a sale on your part of cotton in the United

States for forward shipment to Liverpool, it is believed that the act would not apply to it. However, if it involves also the transmission to Liverpool from the United States of an order to hedge on the Liverpool exchange, such order would be subject to the tax imposed by section 11 and would only be exempted if the contract met either set of requirements specified in the proviso to that section.

It appears that the Liverpool exchange has not yet adopted a form of contract complying either with the conditions specified in the first to sixth subdivisions, inclusive, of section 5, or with the conditions of section 10 of the act. However, if it should adopt them, orders may then be transmitted abroad for such contracts on the Liverpool exchange without liability to the tax imposed by section 11 of the act.

Respectfully, CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MEMORANDUM OF INQUIRY.

Assuming that this department determines, under its rules and regulations, to pass upon disputed questions only in the sense of superappeals from the board of appeals of the exchange in question, which board is the body next higher than the classification committee, please give to me an interpretation under the act of the rights of a member wishing to tender cotton on a contract which the classification committee adjudged as being untenderable, but which the tenderer held to be in conformity with the law. It will be noted that in this case the dispute has arisen not between the person making the tender to the person receiving the same, but between the person making the tender and the classification committee.

SEPTEMBER 23, 1914.

MEMORANDUM IN REPLY.

7.

I am in receipt of your memorandum of September 23, 1914, requesting an opinion as to the rights of a member of a cotton exchange, who has entered into a future contract under the cotton futures act, to tender cotton which the classification committee of the exchange has adjudged to be untenderable, but which the member holds to be tenderable.

In order to gain exemption, under section 5 of the act, from the tax imposed by section 3 thereof, the contract must contain all the provisions specified in section 5. In addition to such provisions, it is believed that the parties may include such further terms as are not in conflict therewith, but they could not include any term inconsistent with any provision required to be inserted by section 5, without subjecting their contract to taxation under the act.

It seems to be not inconsistent with the terms of section 5 that the classification committee or board of appeals of the exchange pass on the tenderability of cotton for the guidance of members of the exchange in making tenders on their contracts, provided it is left purely optional with the member whether or not to accept the determination of the committee or board.

However, it is believed that any agreement between the parties to a future contract, for which exemption is claimed under section 5 of the act, to accept as final the determination of the classification committee or board of appeals that certain cotton is not of a tenderable grade, class or quality, would in effect contravene the seventh subdivision of section 5, and subject the transaction to taxation under the act, since it would deprive the party of the right to make a tender of the particular cotton and get his question before the Secretary of Agriculture for determination under said seventh subdivision.

It is my opinion, therefore, that the party obligated to deliver cotton under a contract made in conformity with section 5 of the act has the right to tender any cotton

which he believes to be in fulfillment of his contract, notwithstanding any determination to the contrary by the classification committee or board of appeals of the exchange, although he may follow the decision of the committee or board if he sees fit. If that right of tender is attempted to be taken away from him by any clause in the contract, it is then in conflict with section 5 of the act and is subject to the tax.

October 1, 1914.

As some misapprehension seems to exist among the general public as to whether the United States cotton futures act prohibits hedging, the following letter is published for the information of those interested.

8.

Sir: Your letter of September 9, to the Secretary of Agriculture, asking whether the United States cotton futures act prohibits the closing out of contracts by further sales on purchases without the transfer of the actual cotton, or whether it prohibits hedging, has been referred to this office for reply.

Section 3 of the cotton futures act of August 18, 1914 (38 Stat., 693), imposes generally on contracts of sale of cotton for future delivery, made at, on, or in any exchange, board of trade, or similar institution or place of business, a tax of 2 cents for each pound of cotton involved in such contracts. Sections 5 and 10 of the act, respectively, define two separate and distinct sets of conditions with either of which such contracts may comply in order to be exempted from the tax.

It appears that hedging can not practically be carried on under section 10 of the act, since its requirements are not adapted to transactions in the future market, particularly since it forbids "set offs" and "ring" settlements, and requires in each case actual delivery of the cotton specified in the contract, and no other. This section, however, was apparently not intended to cover contracts made in the future market, but was designed to allow exemption from the tax of those contracts for the sale of cotton for future delivery, made on exchanges, which are consummated by actual delivery of the specific cotton contracted for, such, for instance, as what are known in the trade as "f. o. b." contracts.

It is believed that trading in the future market may, and will be, conducted under section 5 of the act, in order to gain exemption from the tax. This section contemplates basis contracts, and does not prohibit one contract from being set off against another.

It is the view of this department, therefore, that the practice of hedging may continue under the cotton futures act, free from the tax imposed thereby, if each cotton future contract on the exchanges is made to conform to the requirements of section 5 of the act.

September 21, 1914.

TELEGRAPHIC QUERY

9.

Concerning existing future contracts in Liverpool, either purchases or sales, can our members, subsequent to February 18, close them out by sale to or purchase from the original purchaser or seller without tax? Please advise us of the exact phraseology to be used in telegraphing instructions to close out existing contracts. Will a tax be imposed upon sales of spot cotton abroad where the price is fixed on the basis of Liverpool futures, the seller of the spot cotton having no interest in any futures that may be involved in the transaction? Your early, definite, and precise ruling by wire collect on these two points will be appreciated.

REPLY.

10.

Orders may be sent to Liverpool after eighteenth to close out Liverpool future contracts by agreement between purchaser and seller thereunder, in accordance with Treasury decision two one four three. Suggest form of order be an offer to other party

to cancel contract upon payment from one party to other, as case may be, of specified sum. Acceptance of order would bind transaction and result in closing out contract between parties. My opinion sale of spot cotton for shipment abroad, even if price of sale is fixed on basis of Liverpool futures, not subject to tax under futures act, but if transaction involves future delivery of cotton grown in United States and is made or to be made at, on, or in foreign exchange, an order sent abroad for such contract liable to tax after eighteenth unless such exchange adopts a form of contract for which order is made that complies with either set of conditions specified in proviso to section 11 of act.

EXPLANATION OF THE DESIGNATION OF SPOT MARKETS.

11.

Some misunderstanding seems to exist concerning the significance of designating a market as a bona fide spot market under the United States cotton futures act. Section 8 of the act lays down certain general principles for the guidance of the Secretary in designating these markets. The volume of actual spot cotton business and the conditions under which it is transacted are the determining factors. When a spot market is designated as such it is understood that in the light of such information as the department has been able to obtain it meets the requirements of the law.

The quotations of certain of these designated spot markets are being used to determine the differences which must prevail in the settlement of future contracts. The quotations of others are not being so used at present. This does not imply that the quotations of the latter are less reliable than those of the former, or that the business done in these markets is of smaller volume and of a less desirable character, or that their position is less dignified than is that of the markets whose quotations actually are being used.

The differences in the markets designated in section 2 of regulation 3 of Circular No. 46 are averaged daily to arrive at the differences for the future exchanges. It is desirable that the quotations of a few good markets, not used for the above purpose, be furnished to the department as a check upon those actually in use, at the same time keeping those markets in position for use whenever occasion arises.

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R. R. A.—Markets 4. Issued April 16, 1915.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF MARKETS AND RURAL ORGANIZATION.
CHARLES J. BRAND, Chief.

SERVICE AND REGULATORY ANNOUNCEMENTS.

No. 4.

CONTENTS.

DISTRIBUTION OF SERVICE AND REGULATORY ANNOUNCEMENTS.

1.

Judging from the applications which have been received by the Office of Markets and Rural Organization for large numbers of copies of the Service and Regulatory Announcements it is believed that there is some misapprehension regarding their distribution from this office. As the cotton futures work is a new feature of the department's activities, the widest possible circulation is given to the announcements in the original distribution, the mailing list including the membership lists of the two large future exchanges, as well as those of 20 or more spot cotton exchanges, about 8,000 cotton shippers and buyers, nearly 1,000 cotton mills, besides numerous supplementary lists of persons interested.

The administrative regulations of this department are quite explicit in stating that as far as practicable not more than one copy should be sent to any individual. It is requested, therefore, that firms desiring to have certain individuals receive these announcements submit those names for the mailing list rather than request additional copies for redistribution.

SUGGESTIONS REGARDING SAMPLES SUBMITTED IN DISPUTES.

2.

Samples submitted to the Secretary of Agriculture in cases of disputes between parties to section 5 contracts should weigh not less than one-third of a pound (from 5 to 6 ounces) and preferably should represent both sides of the bale and should not have been handled previously, but should represent accurately the condition or quality of the cotton in the bale. It is desirable that the samples be sealed at the bale, thus avoiding all handling. Inadequate and much handled samples constitute a poor basis for judging the grade of cotton accurately. Under the rules governing disputes, the Secretary of Agriculture retains the right to call for new samples when those submitted are inadequate for the purpose of a fair determination of the question, or questions, in dispute. On account of the difficulty and expense to parties that would be involved, the department has no desire to exercise this right and there is no intention to call upon them for additional samples, except when really necessary. Nevertheless, those referring disputes to this department should bear in mind that small, poorly prepared samples may be thrown out and new samples may be required.

It is important for those who submit samples of cotton to the department for its inspection and decision thereon to exercise care that the sender's name and address are plainly marked on the outside of the package and that all papers required by the rules and regulations are filled out completely and accurately. Lot and tag numbers, or other means of identifying each bale with its grade, are required by the law and must accompany each sample, but no name or mark or other means of establishing the identity, or ownership, or history of the cotton should appear on the inside of the package. It is the desire of the department that every sample shall be passed upon on its own merits and without extraneous influences.

ADDITIONAL FACTS CONCERNING SAMPLES.

3.

While no question, other than that in dispute, is passed upon by the examiners, it sometimes occurs in the course of their inspection of the samples submitted that they notice some fact with reference to the grade, quality, or length of staple of the cotton involved, as to which no question was referred by either the complainant or the respondent, but which affects the tenderability of the cotton under the contract. When this is the case, the fact so discovered may be stated for the information of the parties and for such use as they may desire to make of it. It is not to be understood, however, that the examiners will, in any case, make any examination of the cotton not necessary for the purpose of determining the question in dispute. When the dispute is finally determined, the findings of the Secretary of Agriculture will be upon those questions only which are referred to him by the parties.

EXAMINERS' MEMORANDA OF CONCLUSIONS.

4.

Section 25 of regulation 2 of the Secretary of Agriculture is designed to facilitate the conduct of business by the parties to disputes. If they care to act upon the memoranda required by that section to be issued in advance of the formal findings by the Secretary of Agriculture, the furnishing of the memoranda promptly will enable them to do so. While it is expected that the examiners' conclusions, as stated in the memoranda, will form the basis of the findings of the Secretary of Agriculture, without change, such memoranda are not final. and only the formal findings of the Secretary himself are, by section 5 of the act, made the official expression of this department's decision as to the grade, quality, or length of staple of cotton involved in a dispute.

DEFINITE STATEMENTS OF CLAIMS OF PARTIES IN DISPUTES REFERRED TO THE SECRETARY.

5.

In referring disputes to the Secretary of Agriculture for determination it is particularly important that the questions in dispute, the claims of respective parties as to the quality, or grade, or length of staple of each bale of cotton involved, and the facts material thereto, shall be carefully and definitely expressed in clear and concise language. The use of general terms to which various meanings may be applied should be avoided. The issues of fact will then be more easily understood and passed upon; the amount of advance deposit to be required, and the costs to be assessed, will be more easily ascertained; the hearing and determination of disputes will be greatly facilitated; and the findings of the Secretary will be issued with less delay.

The terms "bollies," "unclassable," "untenderable," and "reduced in value below Good Ordinary," illustrate the difficulties which may arise in determining the issues between the parties.

It may be intended by the use of the term "bollies" that the cotton is what is known as "machine cotton," and because thereof is "reduced in value below that of Good Ordinary," a question which is very difficult of determination, and may necessitate calling for special evidence; or the parties may mean that the cotton is of immature or of perished staple, which are disqualifications mentioned in the act. It is thus to be seen that the term "bollies" may include at least three different irregularities or defects, the existence of any one of which might be the question upon which the parties seek a determination.

Likewise, in using the terms "unclassable" and "untenderable" the parties perhaps mean that the cotton is below the grade of Good Ordinary, or below the grade of Low Middling Blue Tinged, or below the grade of Middling Stained, or is of some other grade or of a quality or of a length of staple which renders it untenderable under the contract. Any one or more of a number of facts may constitute the question referred, none of which is definitely specified.

When the claim is made that the cotton is "reduced in value below Good Ordinary," the extraneous matter alleged to be present, or the irregularity or defect claimed to exist, should be stated, as, for instance, that it is sandy, or that it is dusty, etc.

Whenever applicable to the particular facts of the case, the parties should make use of terms contained in the act.

SUGGESTED FORMS OF PAPERS TO BE USED IN DISPUTES UNDER THE UNITED STATES COTTON FUTURES ACT.

6.

It is the earnest desire of the department that all disputes referred to it may be passed upon without delay. In order to obtain expeditious action, however, the department must have the cooperation of those between whom a dispute arises. All papers must be submitted in proper form before a hearing can proceed and a decision be reached. Careful attention to the making out and filing of papers in the required form is absolutely essential in order to obtain prompt action on the part of the department.

The following forms are suggested as guides for the preparation of complaints, answers, and stipulations in disputes under the United States cotton futures act. They are framed so as to meet the requirements of the regulations of the Secretary of Agriculture applicable thereto, viz, sections 3, 5, and 6 of Regulation 2 of the Rules and Regulations of the Secretary of Agriculture under the act (Circular No. 46), and, as far as practicable, to suit the convenience, both of the parties and of the department. Explanatory notes in parentheses are inserted in appropriate places in each form.

The form of answer is suitable for the average dispute, but in the event that the respondent does not admit each allegation of the complaint, except subdivisions (*e*) and (*h*) thereof, he should vary the form of answer so as specifically to deny each such allegation not admitted by him, and allege the corresponding fact as he contends it to be.

It is suggested that, whenever practicable, a dispute be referred by stipulation instead of by complaint. The former method would obviate the necessity of preparing, filing, and serving an answer and would expedite the determination of the dispute by enabling the department, in the average case, to proceed to examine the samples of cotton submitted without waiting for the receipt of an answer or for the expiration of the time allowed by the regulations for filing it.

7. BEFORE THE SECRETARY OF AGRICULTURE.

Dispute No. .....
(Leave blank.)

Contract No. .....
(Fill in.)

United States cotton futures act, section 5.

..... Complainant.. *v.* ..... Respondent..	COMPLAINT (Sec. 3, Reg. 2, of the Rules and Regulations of the Secretary of Agriculture.)

Complainant.. state.. that:

(*a*) The name.. of the complainant.. is/are ..... (Set out in full, giving partners and partnership name if a firm.), whose post office address is ..... (Street, number, city, and State.) The name.. of the respondent.. is/are ..... (Set out in full, giving partners and partnership name if a firm.) whose post office address is ..... (Street, number, city, and State.)

(*b*) On ..... 191.., ... (respondent..) or (complainant..) tendered..... bales of cotton to ..... (complainant..) or (respondent..) in settlement of a contract for ..... (Month.) delivery entered into on ..... 191.., on the ..... Cotton Exchange, ... (City.) (State.) subject to the United States cotton futures act, section 5.

(*c*) The interest of complainant.. in the contract is that of ..... (buyer) or (seller.) and of ..... (person receiving the tender.) or (person making the tender.)

(*d*) On ....., 191.., ... (respondent..) or (complainant..) gave notice that the cotton involved would be delivered on ....., 191..

(*e*) Every question in dispute and complainant.. claim as to the ..... (quality.) or ..... (grade.) or (length of staple.) of each bale involved in this dispute, and the facts material thereto, are set forth in the statement.. marked Contract No. .., which is/are attached to and made a part of this complaint.

(*f*) The lot and tag numbers identifying each bale in dispute, and the place or places where said cotton is located, are set forth in said attached statement.. marked Contract No. ..

(*g*) The parties have agreed upon the samples to be submitted to the Secretary of Agriculture by complainant.. in this dispute, except samples of bales marked as follows:

(Here give lot number and tag number of each bale, the sample of which has not been agreed upon.)

(*h*) Within complainant.. knowledge, ...
(Give number of bales; if none, state fact.)
bales of cotton involved in this dispute have been involved in a dispute previously referred to the Secretary of Agriculture, as follows:

(Here give, if known, reference to such previous dispute by names of parties, dates, findings, or other means, and like adequate identification, by marks or numbers, of each bale in dispute which was involved in such previous dispute.)

Complainant.. requests that a determination be made of the questions involved in this dispute .....
(and if an oral hearing is desired, so state.)

....., 191..
(Date.)

.....
(Signature of complainant.. or (his) or (their) authorized agent; if agent signs, give his address.)

Service of copies of this complaint and attached papers acknowledged this ..... day of ....., 191..

.....
(Signature of respondent..)

(If service is not acknowledged in writing, sworn proof of service on respondent should be furnished.)

STATEMENT.

.....
Complainant..
v.
.....
Respondent..

Dispute No. .....
Contract No. .....
Detailed statement made a part of
.....
(Complaint.) (stipulation.)

Number of bales in dispute, ...
Location of cotton in dispute: .....
.....

Lot No.	Tag No.	Question in dispute.	Complainant.. claim.	Respondent.. claim.
		(Here state whether grade, staple, quality.)	(In case of either complaint or stipulation, here state specific claim as to grade, staple, quality, in dispute.)	(In case of stipulation, here state specific claim as to grade, staple, quality, in dispute.)

(This form is to be used in making up detailed statement to be attached to either a complaint or a stipulation.)

8. BEFORE THE SECRETARY OF AGRICULTURE.

Dispute No. .....
(Leave blank.)
Contract No. .....
(Fill in.)

United States cotton futures act, section 5.

.....
Complainant..
v.
.....
Respondent..

ANSWER.
(Sec. 5, Reg. 2, of Rules and Regulations of the Secretary of Agriculture.)

Respondent admits each allegation of the complaint, except subdivisions (*e*) and (*h*) thereof, and states that:

(*a*) The name.. of the respondent.. is/are ..... (Set out in full, giving partners and partnership name if a firm.) ..... whose post-office address is ..... (Street, number, city, and State.) .....

(*b*) The interest of respondent.. in the contract is that of ..... (seller.) or (buyer.) and of person who ..... (made) or (received) the tender.

(*c*) The respondent.. claim as to the ..... (quality.) or (grade.) or (length of staple.) of each bale of cotton involved in this dispute, and the facts material thereto, are set forth in the statement.. marked Contract No. .. which is/are attached to and made a part of this answer.

(*d*) Within respondent.. knowledge, ... (Give number of bales; if none, state fact.) bales of the cotton involved in this dispute have been involved in a dispute previously referred to the Secretary of Agriculture, as follows:

(Here give, if known, reference to such previous dispute by names of parties, dates, findings, or other means, and like adequate identification, by marks or numbers, of each bale in dispute which was involved in such previous dispute.)

A determination of the questions involved in this dispute is requested ..... (and if an oral hearing is desired, so state.) .....

..... 191...
(Date.)

.....
(Signature of respondent.. or (his or their) authorized agent; if agent signs, give his address.)

Service of copies of this answer and attached papers acknowledged this ..... day of ..... 191...

.....
(Signature of complainant..)

(If service is not acknowledged in writing, sworn proof of service on complainant.. should be furnished.)

STATEMENT.

..... Complainant..
v.
..... Respondent..

Dispute No. .....
Contract No. .....
Detailed statement made a part of answer.

Number of bales in dispute .....

Lot No.	Tag No.	Respondent.. claim.	Remarks.
		(Here state specific claim as to grade, staple, quality, in dispute.)	

BEFORE THE SECRETARY OF AGRICULTURE.

9.

Dispute No. .....
(Leave blank.)

United States cotton futures act, section 5.

..... Complainant.. v. ..... Respondent..

STIPULATION.

(Sec. 6, Reg. 2, of the Rules and Regulations of the Secretary of Agriculture.)

Complainant.. and respondent.. agree and state that:

(*a*) The name.. of the complainant.. is/are ..... (Set out in full, giving partners and partnership name, if a firm.), whose post-office address is ..... (Street, number, city, and State.) The name.. of the respondent.. is/are ..... (Set out in full, giving partners and partnership name, if a firm.), whose post-office address is ..... (Street, number, city, and State.)

(*b*) On ....., 191.., ... (respondent..) or (complainant..) tendered ..... bales of cotton to ..... (complainant..) or (respondent..) in settlement of a contract for ..... (Month.) delivery entered into on ....., 191.., on the .....Cotton Exchange. ....., (City.) (State.) subject to the United States cotton futures act, section 5.

(*c*) The interest of complainant.. in the contract is that of ..... (Buyer.) or (Seller.) and of person who ..... (received) or (made) the tender; and the interest of respondent.. in the contract is that of ..... (seller) or (buyer.) and of person who ..... (made) or (received) the tender.

(*d*) On ....., 191.., ... (respondent..) or (complainant..) gave notice that the cotton involved would be delivered on ....., 191...

(*e*) Every question in dispute, the respective claims of complainant.. and respondent.. as to the ..... (quality) or (grade) or (length of staple) of each bale of the cotton involved therein, and the facts material thereto, are set forth in the statement.. marked Contract No. .., which is/are attached to and made a part of this stipulation.

(*f*) The lot and tag numbers identifying each bale in dispute, and the place or places where said cotton is located, are set forth in said attached statement.., marked Contract No. ..

(*g*) The parties have agreed upon the samples to be submitted to the Secretary of Agriculture in this dispute, except samples of bales marked as follows:

(Here give lot number and tag number of each bale, the sample of which has not been agreed upon, and state which party submits the same.)

(*h*) Within the knowledge of ..... (complainant..) or (respondent..) or ....., ... (complainant and respondent..) (Give number of bales; if none, state fact.)

bales of the cotton involved in this dispute have been involved in a dispute previously referred to the Secretary of Agriculture, as follows:

(Here give, if known, reference to such previous dispute by names of parties, dates, findings, or other means, and like adequate identification, by marks or numbers, of each bale in dispute which was involved in such previous dispute.)

A determination of the questions involved in this dispute is requested.

.....

(And, if an oral hearing is desired, so state.)

.....

(Signature of complainant.. or (his or their) authorized agent; if agent signs, give his address.)

.....

(Signature of respondent.. or (his or their) authorized agent; if agent signs, give his address.)

....., 191...

(Date.)

(Parties who submit disputes by stipulation will furnish statement in the form as shown on page 27 following complaint.)

MISAPPREHENSIONS CONCERNING THE ADMINISTRATION OF THE UNITED STATES COTTON FUTURES ACT.

10.

There have been circulated from time to time throughout the cotton trade certain statements concerning the administration by this department of the United States cotton futures Act which have given rise to misapprehension.

(1) One such statement is to the effect that no rules and regulations were given out by the department to the public until February 18, 1915, the day the act went into effect.

The facts are as follows:

Shortly prior to November 1, 1914, the Secretary of the Treasury and the Secretary of Agriculture announced, through the press and otherwise, a joint public hearing to be held in Washington, D. C., on November 12, 1914, to consider rules and regulations proposed to be issued by them under the act. Simultaneously there were distributed to the interested public, including producers, cotton merchants, brokers, exchange members, manufacturers, bankers, carriers, and warehousemen more than 12,000 copies of the proposed rules and regulations, together with the text of the act. All such persons were invited to be present and discuss the proposed regulations orally or to submit their comments in writing. Representatives of the New York Cotton Exchange and others attending the hearing on November 12, 1914, were given full opportunity to present their views on any and every section of the proposed regulations and made such comments thereon as they saw fit. In addition, the department received a number of written comments. Few alterations were suggested either at the hearing or in the written communications.

In the Rules and Regulations of the Secretary of Agriculture as finally adopted, and now in force, there are only four changes from the draft discussed at the hearing on November 12, 1914, namely, (a) the time for filing a complaint prescribed by section 2 of Regulation 2 was lengthened by four days; (b) the schedule of costs of hearing disputes in section 31 of Regulation 2 was altered slightly; (c) the names of bona fide spot markets were inserted in Regulation 3; and (d) the method for determining the value of one grade in a particular spot market on a given day, when there are no sales of such grade in that market on that day, was incorporated in Regulation 4.

In order that they might reach the persons concerned at the same time, proof-sheet copies of the Rules and Regulations as signed by the Secretary of Agriculture, together with requests that they be posted on the bulletin boards of the exchanges, were mailed in Washington to the president of the New Orleans Cotton Exchange on February 10, 1915, and to the president of the New York Cotton Exchange on February 11, 1915.

On February 12, 1915, 2,000 copies of the final edition of the Rules and Regulations were mailed in Washington to persons in the trade, including one copy to each member of every future and of every spot cotton exchange in the United States. On February 13 approximately 7,000 more were sent out.

(2) Publicity has also been given to a statement by a Washington newspaper correspondent that the act was believed, by persons holding responsible positions in this department, to be unworkable.

The correspondent has declined to reveal the names of the persons to whom he referred. Diligent inquiry among all officials of the department connected in any way with the administration of the act has failed to disclose anyone who has either expressed or entertained such a belief. In fact, thus far no especially difficult problems have been encountered.

(3) Certain parties have indicated that the department's views as to the right of a deliverer under a section 5 contract to tender cotton on his own notice or certificate were not known to the trade until the publication, on March 2, 1915, of Service and Regulatory Announcements No. 3 of the Office of Markets and Rural Organization, containing memorandum of inquiry (No. 6, p. 4), dated September 23, 1914, and memorandum in reply (No. 7, p. 4), dated October 1, 1914.

The Chief of the Office of Markets and Rural Organization is charged by the Secretary of Agriculture with the administration of the act, so far as this department is concerned. The memorandum of September 23, 1914, was an inquiry addressed by the chief of that office to the Solicitor of the Department. The memorandum of October 1, 1914, was the Solicitor's reply to that inquiry.

The views of the department on the point here involved were, in fact, expressed in paragraph 2 of section 26 of Regulation 2 of the proposed Rules and Regulations, of which 12,000 copies were distributed widespread to the interested public about November 1, 1914, and discussed at the public hearing of November 12, 1914, and are specifically embodied, in the same words, in the correspondingly numbered paragraph of the Rules and Regulations as finally adopted by the Secretary of Agriculture on February 10, 1915. This paragraph is as follows:

> No controversy is a dispute if it arise out of a contract that does not in all respects comply with the conditions of section 5 of the act, and in case such controversy is referred to the Secretary of Agriculture the proceeding will be dismissed without being determined. No contract shall, for the purposes of these regulations, be deemed to comply with the conditions of section 5 of the act if it contain, or incorporate therein, by reference or otherwise, any provision or any by-law, rule, or custom of an exchange which is inconsistent or in conflict with any requirement of section 5 of the act, nor if the parties enter into any collateral or additional agreement or understanding, either verbal or written, respecting the subject matter of such contract which is inconsistent or in conflict with any requirement of said section. Any such provision, by-law, rule, custom, agreement, or understanding which in any manner takes away or impairs the right of the person obligated to deliver cotton to tender any cotton which is of or within the grades, of the quality, and of the length of staple deliverable under a section 5 contract, or which takes away or impairs his right to prepare for himself, or to have prepared by anyone at his direction the written notice or certificate stating the grade of cotton, pursuant to the sixth subdivision of section 5 of the act, shall be deemed inconsistent and in conflict with the requirements of said section.

The provision was also discussed and explained at the public hearing on November 12, 1914, as shown by the following extract from the stenographic minutes thereof (pp. 74–75):

> Mr. Caffey (Solicitor of the Department). There are only two people that are mentioned in the statute, namely, the buyer and seller on the exchange. The statute does not deal with shippers.
>
> Mr. Cairns (chairman of the Warehouse and Delivery Committee, New York Cotton Exchange). I am doing away with the shipper altogether. I have sold this man 100 bales of December delivery. I have delivered to him 100 bales of cotton which the

classification committee call middling, but which I am satisfied should have been called strict middling.

Mr. CAFFEY. Are you a member of the exchange?

Mr. CAIRNS. I am a member of the exchange, the party who has sold that December contract. Now, I tender to the receiver of that cotton a grade certificate that classes that cotton middling, but I myself contend that it is strict middling. Have I the right to appeal to Washington?

Mr. CAFFEY. Against your own tender?

Mr. CAIRNS. Against my own tender, yes.

Mr. CAFFEY. I do not see the possibility of your appealing against your own tender.

Mr. BRAND (Chief of the Office of Markets and Rural Organization). Mr. Caffey, if I may explain, Mr. Cairns's case presupposes that he is going to accept the classification committee's classification, and the question he raises is, is he compelled, under this act, to accept the classification committee's classification, or may he tender that as he believes it to be, strict middling, and not middling?

Mr. CAFFEY. You can tender it as you believe it to be.

Mr. CAIRNS. In other words, I can tender that grade certificate as tendered to me, or I can slip it in the wastebasket and tender that cotton at strict middling, if I wish to?

Mr. CAFFEY. Absolutely.

Mr. CAIRNS. All right.

In a letter from the Chief of the Office of Markets and Rural Organization to the president of the New York Cotton Exchange, dated January 12, 1915, commenting on proposed by-laws and rules of the exchange, it was said:

CLASSIFICATION AND CERTIFICATION.

It is believed that the seller, under a contract made in compliance with section 5 of the United States cotton futures act, has the right to tender any cotton that is in fact of a grade for which a standard has been established by the Secretary of Agriculture, and is not excluded from delivery under such contract. It appears also that in case of a dispute between the parties as to the grade, quality, or length of staple of the cotton so tendered, either party has the right to have the questions in dispute determined by the Secretary of Agriculture.

It does not seem necessarily to be inconsistent with section 5 of the act that a member be required by the rules and by-laws of the exchange to have his cotton inspected and classified through the medium of the exchange as a preliminary step before it is tendered or delivered. However, any rule which makes the action of any exchange officer, board, or committee, in rejecting or classifying cotton, finally binding on a member so as to cut off his right to tender on a contract cotton which might in fact be of a deliverable grade, quality, and length of staple, or of a different grade from that which it was classified, or which would deprive him of his right to refer to the Secretary of Agriculture any dispute with the other party to the contract as to the grade, quality, or length of staple of the cotton tendered, would seem to be in conflict with section 5 of the act. The by-laws and rules of the New York Cotton Exchange provide for an appeal to the Secretary of Agriculture on class, staple, and rejections from decisions of the classification committee under the terms and conditions of such rules as the board of managers may adopt. (See sections 21, 48, and 50 of the by-laws.) Under the scheme provided for in the by-laws and rules, this appeal must in some cases, such as rejections by the classification committee, be taken before tender, when the Secretary of Agriculture has no authority to entertain jurisdiction and would have to dismiss the appeal. Thus in such cases the seller could not tender his cotton and could not have the question of its tenderability passed upon by the Secretary of Agriculture, but would have to accept the action of the exchange committee as finally binding. It is further suggested that the terms and conditions under which a person may refer his dispute to the Secretary of Agriculture are provided for in the act and in the rules and regulations of the Secretary of Agriculture, and can not be qualified by any terms and conditions imposed by the board of managers.

In order to cure this situation and prevent a possible conflict with the requirements of section 5 of the act it is suggested that a rule or by-law be adopted by the exchange to the effect that in case the seller is dissatisfied with the action of the classification committee in rejecting his cotton, or in classifying it as to grade, quality, or length of staple, nothing in the rules shall be deemed to prevent him from tendering such cotton on his own notice or certificate of grade, or from referring any dispute which arises between the person making the tender and the person receiving the same, as to the quality or grade or length of staple of any cotton tendered under the contract to the Secretary of Agriculture for determination. It may be that this privilege would

seldom be exercised, but the insertion of provisions to this effect would preserve to the seller his full right of tender under section 5 of the act and enable the question of grade, quality, or length of staple of cotton to get before the Secretary of Agriculture in the event that the receiver did not wish to accept the seller's classification.

Under the above view it would be necessary to amend the sections of the rules and by-laws allowing appeal to the Secretary of Agriculture before tender is made. It is also suggested that the word "reference" be substituted for the word "appeal" wherever an appeal to the Secretary of Agriculture is mentioned. Strictly speaking, no appeal is taken to the Secretary of Agriculture. Although a question may be referred to the Secretary of Agriculture after action thereon by the exchange committee, yet his action is independent of, and without reference to, the action of such committee.

In addition, the question was orally discussed in detail and the same view presented by officials of the department in various conferences with the president and other representatives of the New York Cotton Exchange as early as October 28, 1914, and on sundry other dates during the autumn and winter of 1914.

In this connection it is to be noted that the views of this department, other than as embraced in the Rules and Regulations of the Secretary of Agriculture, or included in the written findings of the Secretary upon disputes referred to him, in respect to the Cotton Futures Act are not rulings in any sense. They are merely expressions of the department's opinion, which may or may not be accepted by the courts, and are given for the purposes of assisting the public to understand the act and of facilitating its operation. In order to be of the greatest use the department intends to give its opinions the widest and earliest practicable publicity through the Service and Regulatory Announcements.

OPINIONS OF GENERAL INTEREST REGARDING QUESTIONS ARISING UNDER THE UNITED STATES COTTON FUTURES ACT.

11. LETTERS.

CONTRACTS MADE PRIOR TO FEBRUARY 18, 1915.

Parties to future contracts, under which disputes have arisen, that were entered into before the date on which the United States cotton futures act went into effect, have in some instances wished to refer them to the Department of Agriculture. While it is not believed that the findings of the Secretary of Agriculture on contracts made prior to that date will be accepted as prima facie evidence by the courts, the department will be glad to pass on such contracts, provided the parties agree upon a reference of the dispute to the department, and provided the volume of such work does not interfere with the hearing of disputes on contracts made subsequent to that date. All of these disputes which are passed on will receive the same attention as do the disputes arising under contracts made subsequent to February 18.

In this connection the following letter will be of interest:

12.

GENTLEMEN: Complaints have been received from you in which you refer to the Secretary of Agriculture disputes arising out of contracts entered into prior to the 18th day of February, 1915. Your attention is respectfully invited to section 21 of the United States cotton futures act, which reads as follows:

That sections nine, nineteen, and twenty of this act and all provisions of this act authorizing rules and regulations to be prescribed shall be effective immediately. All other sections of this act shall become and be effective on and after six months from the date of the passage of this act: *Provided*, That nothing in this act shall be construed to apply to any contract of sale of any cotton for future delivery mentioned in section three of this act which shall have been made prior to the date when section three becomes effective.

Inasmuch as the provisions of the United States cotton futures act are not operative as to the contracts mentioned in section 3 entered into prior to February 18, 1915, it

is the opinion of this office that the seventh subdivision of section 5 of the act does not provide for the reference to and determination by the Secretary of Agriculture of disputes arising out of such contracts, and that his findings, if made, would not be accepted in the courts of the United States as prima facie evidence of the facts therein stated.

It may be, notwithstanding this opinion, that the parties will desire to know the conclusions of this office upon the disputes already submitted arising out of contracts entered into before February 18, 1915. If such is the case this office is inclined to consider the questions submitted, and to make known its conclusions thereon for the information and guidance of the parties. An expression of your desires in the matter will be awaited before taking any definite action. A letter to this effect is being written to the parties named as respondents in the complaints in question.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 22, 1915.

CERTIFICATION BY CLASSIFICATION COMMITTEE.

13.

GENTLEMEN: In your letter of March 4, 1915, you refer to an opinion contained in Service and Regulatory Announcements to the effect that the party obligated to deliver cotton has the right, under a contract made in conformity with section 5 of the United States cotton futures act, to tender any cotton which he believes to be in fulfillment of his contract, notwithstanding any determination to the contrary by the classification committee or the board of appeals of the exchange. You ask my opinion whether the deliverer would be liable for any tax under the act if he makes a tender of cotton which he believes to be in fulfillment of the contract and, upon a dispute referred to the Secretary of Agriculture, it is determined that all or part of the cotton so tendered was of an untenderable grade, class, or quality.

The right of tender having been preserved as indicated in your question, if the contract entered into, or the memorandum thereof, in all other respects complies with section 5 of the act and the rules and regulations made pursuant thereto, it will be exempt from tax. The findings of the Secretary of Agriculture subsequently made upon a dispute referred to him under the seventh subdivision of section 5 of the act are not an element in this determination, and therefore no tax will be imposed because the tender actually made is not sustained.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 13, 1915.

14.

DEAR SIRS: It appears that you have tendered to Messrs. ———, ——— & Co., on two contracts made on the New York Cotton Exchange subject to the United States cotton futures act, section 5, 101 and 102 bales of cotton, respectively, on your own notice of grade and staple, without having the cotton inspected and classed by the exchange, and without furnishing to the receiver a certificate of grade and staple issued by the exchange. You contend that under the provisions of section 5 of the act and the rules of the exchange, which are a part of your contracts you are not required to have the cotton inspected and classed by the exchange, or to furnish to the receiver certificates of grade and staple issued by it. The receiver contends that you are so obligated. You ask for a ruling on the question.

It appears that there is nothing in section 5 of the United States cotton futures act, or in the rules and regulations prescribed thereunder, that requires the person making a tender on a section 5 contract to have his cotton inspected and classified by the exchange, or to furnish to the receiver a certificate of grade and staple issued by it.

However, it is believed that there is nothing in section 5 of the act, or the rules and regulations thereunder, that would prevent the exchange from requiring a party proposing to make delivery under such contract, in all cases, to have his cotton inspected and classified by the exchange before making his tender, and to furnish at that time a certificate of grade and staple issued by it; although it should be borne in mind that there must be nothing in the contract or in the rules of the exchange which would impair the right of a party, in case he is dissatisfied with the result of the exchange inspection and classification, to tender the cotton on his own certificate, and get the question of its grade, quality, or length of staple, as the case may be, if disputed, before the Secretary of Agriculture for determination. If the rules of the exchange, which are made a part of your contracts, require the use of the exchange machinery in this way before tender, it would appear that you are obligated under your contracts to comply with such requirement. Otherwise, there is nothing to show that you are so obligated. Whether or not such a requirement is imposed by the exchange rules is a matter of their interpretation, as to which I do not feel warranted in expressing any opinion.

You will understand that this department has no authority to make any ruling on the question you present. The foregoing is merely an expression of my views, which may or may not be followed by the courts, and is given to you for whatever assistance it may furnish.

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 13, 1915.

15.

GENTLEMEN: Your letters of March 6 and 10 were referred to this office for reply, being received during my absence from the city.

In your letter of March 6 you state that there is a difference of opinion among the members of your exchange, in that some maintain, based upon Service and Regulatory Announcements No. 3, memorandum No. 7, that any cotton can be delivered on contract without having been classed by your respective committees, and that it is the privilege of every receiver to refer a dispute to the Secretary of Agriculture should he be dissatisfied with the claims made by the deliverer in the invoice rendered at the time of the delivery of the cotton, without being obliged to have the cotton classed by the inspection bureau and classification committee of the exchange, while your contention is that this department expects that all cotton delivered on contract and inspected must, as heretofore, be regularly classed; that certificates referring to grade and staple must be issued by the inspection bureau; that such certificates must be delivered to the receiver of the cotton; and that a dispute may be referred to the Secretary of Agriculture, if desired.

In your letter of March 10 you ask (1) whether this department will receive direct from any member of the New York Cotton Exchange an appeal from the classification of grade and staple of cotton delivered on contract, or (2) whether this department will rule that such appeals will only be entertained in company with a certificate of grade or staple issued by the inspection bureau and classification committee of the New York Cotton Exchange.

A reply was made by this office to your letter of March 10 by telegram, dated March 11, stating that the questions raised by you are governed by the cotton futures act, and that opinions of this department thereon have no force other than expression of its views, which are set out in the Service and Regulatory Announcements above referred to. Inasmuch as it was impossible to answer you fully by telegram, you were advised that a letter would follow in due course.

It is clear that, in order to obtain exemption under section 5 of the act from the tax imposed by section 3 thereof, the contract must contain all the provisions specified in section 5, either expressly or by proper reference thereto. It is the opinion

of this office that, in addition to these provisions, the parties may include others which are not inconsistent with the act itself, or with the rules and regulations made thereunder, without subjecting the contract to taxation under the act. Under this view, it would seem that the exchange rules, made a part of the contract, may provide that members of the exchange must subject their cotton to inspection and classification through exchange instrumentalities before tender, and that the result of such inspection and classification, in the form of a certificate or otherwise, shall be furnished at the time of the tender of the cotton. However, such provisions in the exchange rules would be inconsistent with the statute and the regulations thereunder if so framed as to impair the right of a party dissatisfied with the result of such inspection and classification, to tender upon his own notice or certificate of grade any cotton which he believes to be in fact of or within the grade, of the quality, and of the length of staple deliverable upon a contract made under section 5 of the act. In this connection, your attention is called to article 8 of the Rules and Regulations of the Secretary of the Treasury and to regulation 1, section 26, paragraph 2, of the Rules and Regulations of the Secretary of Agriculture, under the United States cotton futures act. In other words, the exchange rules might require the cotton to be inspected and classed through the exchange, and the results of such inspection and classification to be furnished by the person making the tender; but could not lawfully make such results final and conclusive on the parties to the contract or lawfully prevent the person who tenders the cotton and furnishes such results from using his own notice or certificate as a means of specifying his contention as to what are the grade, quality, and length of staple of the cotton. Thus there is fully preserved to the party making the tender, as well as to the party receiving the same, the right to have the question referred to the Secretary of Agriculture for determination.

Such being the case, the question which either party may refer to the Secretary of Agriculture for determination is that which occurs in case a dispute arises under the seventh subdivision of section 5 of the act between the person making the tender and the person receiving the same, as to the quality, or the grade, or the length of the staple of any cotton actually tendered on the contract. This is not an appeal from a decision of a classification committee of the exchange, nor do the regulations of the Secretary of Agriculture require that the reference of a dispute will only be entertained if accompanied by the certificate of grade or staple issued by the bureau or committee of the exchange. Such certificate does not affect the right to refer such dispute to the Secretary of Agriculture and is not considered necessary to his determination.

It would seem that the difficulties indicated by your letters would be obviated if the rules of the exchange prescribed limitations upon the time for delivery of the exchange certificate of inspection and classification (provided the rights of parties under the act and regulations are safeguarded as above indicated), or, possibly, prescribed also that in the event of a reference of a dispute to the Secretary of Agriculture, payment might be withheld until after the receipt of the findings thereon.

The foregoing is merely an expression of my views, which may or may not be followed by the courts and is given to you for whatever assistance it may furnish.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 17, 1915.

NEW ENGLAND TERMS FOR BUYING AND SELLING COTTON.

16.

SIR: Your letter of March 16, with inclosure, is received. The New England Cotton Buyers Association was formed to "encourage a more intimate business acquaintance among members and a freer exchange of ideas as to the best methods of conducting the business of buying and selling cotton; to establish and maintain in that

business equitable and uniform rules as to contracts, classification, shipments, payments, weighing, tare, reclamations, arbitration, and other matters of mutual importance to the cotton merchants and the cotton mills, and to that end to confer from time to time with the representatives of the cotton mills."

The association has no salaried officers and no meeting place. It maintains a room at 71 Kilby Street, Boston, simply as a class room to class cotton submitted for classification. All cottons sold by members of the association are sold in the offices of the mills or individual offices of the sellers, either in person, by telephone, telegraph, or letter. Almost all the sales made by members of the association are made under the so-called Revised New England Terms for Buying and Selling Cotton.

Two questions are raised by your letter, (1) whether the transactions described are subject to the provisions of the United States cotton futures act of August 18, 1914 (38 Stat. L., 693), and (2) whether the New England Cotton Buyers Association, with its office at 71 Kilby Street, Boston, Mass., is an "exchange, board of trade, or similar institution or place of business" within the meaning of that act.

The taxing provisions of the act are contained in sections 3 and 11 thereof.

Section 11 need not be considered in this connection, since it taxes only orders by persons within the United States for the making of contracts of sale of cotton grown in the United States in cases in which such contracts are, or are to be, made at, on, or in an exchange, board of trade, or similar institution or place of business in a foreign country.

Section 3 taxes all contracts of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business within the jurisdiction of the United States. Any such contract, however, may be exempt from such tax if it comply either with the provisions of section 5, which are peculiarly applicable to what are known as "basis" contracts, or with the provisions of section 10 of the act, which peculiarly apply to what are commonly known as "specific" contracts.

It will be noted that no contract of sale of cotton is taxable under the act under any circumstances unless (1) it is for future delivery, and (2) it is made at, on, or in an exchange, board of trade, or similar institution or place of business. If either of these elements is lacking, the contract is not subject to the provisions of the act at all.

It is not shown in the statement submitted whether the transactions above referred to between the merchants and the mill owners or operators involve the element of future delivery or not. It is assumed that many of them do involve this element.

It appears, however, that these transactions are not made at, on, or in any exchange, board of trade, or similar institution or place of business, but are entered into exclusively in the individual offices of the merchants or in the offices of the mills by direct negotiation privately conducted between the parties either in person, by telephone, by telegraph, or by letter. In no way are the privileges or facilities of any exchange, board of trade, or similar institution or place of business availed of in making these contracts. It is believed, therefore, that such transactions are not subject to the provisions of the United States cotton futures act.

The facts that the transactions are made according to "New England terms," and that the cotton involved is subject to classification at the office of the New England Cotton Buyers Association at Kilby Street, Boston, would not, in my opinion, affect such conclusions, since, notwithstanding those facts, the contracts are not made at, on, or in any exchange, board of trade, or similar institution or place of business within the meaning of the act.

Although the New England Cotton Buyers Association has an office at 71 Kilby Street, Boston, where cottons are classed for its members, yet it appears that the association has no common meeting place for its members and affords them no privileges or facilities whatever for the making of contracts of sale of cotton. Under the circumstances it is believed that the New England Cotton Buyers Association as at present conducted is not an exchange, board of trade, or similar institution or place of business within the meaning of the United States cotton futures act.

Since it appears that the transactions you describe are not subject to the provisions of the act, it would be purely an academic inquiry to consider whether or not in case they were subject to its provisions they would be entitled to exemption under section 10, or in what way they could be adapted to meet the requirements of that section.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 23, 1915.

CAROLINA MILL RULES.

17.

GENTLEMEN: Consideration has been given by this office to your letter of March 15 requesting my opinion on the following questions:

First. Does the tax imposed by section 3 of the United States cotton futures act apply to sales of spot cotton made directly by one party to another on description of grade and staple for future delivery, without reference to the act, and not made at, on, or in any board of trade, exchange, or similar institution or place of business, although such sale may or may not be hedged in an exchange which complies with the provisions of the act?

Second. Does the act require such sale of spot cotton to be made according to the official cotton standards of the United States, if not otherwise specifically agreed to by both seller and buyer, and would such specific agreement contravene the intention of the act?

Third. (*a*) Do such sales, when made in accordance with the Carolina mill rules of 1914 but made without mention of the United States cotton futures act, contravene the intent of the act; (*b*) can such sales be made subject to the Carolina mill rules of 1914 and also subject to the United States cotton futures act?

Fourth. In order that the disputes arising under such sales may be referred to the Secretary of Agriculture for determination is it necessary that the contract be made subject to the United States cotton futures act?

Fifth. Does the tax apply to a transaction in spot cotton for future delivery made outside of any exchange between private parties in a case stated as follows:

A sells to B 100 bales of, say, middling cotton at a fixed price; later B sells the same 100 bales to C at a fixed price; whereupon B instructs A to deliver the cotton to C and collect therefor directly from C and adjust the differences with B.

Sixth. Does the clause contained in section 10 of the act, which provides that "this act shall not be construed to impose a tax on any sale of spot cotton," exempt from the tax purchases and sales of spot cotton for prompt as well as future delivery between private parties when not made on any exchange, although same may be hedged through an exchange by either or both of the parties?

You state that you do a large business with southern mills in the conduct of which you sell to the mills cotton for delivery many months ahead, either on description or on type at specific prices or on call, based, for example, at points on or off future contracts on, for example, the New York Cotton Exchange; that sometimes the mills choose to cancel these sales at an agreed consideration or resell same to other mills or cotton merchants; and that you do not wish to subject yourselves or your customers to a violation of the law either through ignorance or otherwise.

It is necessary in discussing the question submitted to bear in mind that the United States cotton futures act imposes a tax only on a contract of sale of any cotton for future delivery, made at, on, or in any exchange, board of trade, or similar institution or place of business, as stated in section 3; or upon an order transmitted or authorized to be transmitted by a person within the United States for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, as stated in section 11.

If, however, the contract of sale mentioned in section 3 complies with the requirements of section 5 for what are commonly known as "basis" contracts or with the requirements of section 10 for what are commonly referred to as "specific" contracts, or if the contract of sale mentioned in section 11 complies with the conditions specified

in the proviso in that section, no tax will be levied on the contract or on the order therefor, as the case may be. In addition the act expressly provides that it shall not be construed to impose a tax on any sale of spot cotton.

It is apparent that the contract of sale contemplated by the act must be (*a*) for future delivery, and (*b*) made at, on, or in any exchange, board of trade, or similar institution or place of business, and if either of these essential elements is lacking the provisions of the act do not apply.

If the sales referred to, as stated in the questions submitted, are not made at, on, or in any exchange, board of trade, or similar institution or place of business, no tax will be levied thereon, and to that extent your questions can be disposed of.

In your first question, the sale not being subject to the tax, it appears that the hedge you refer to complies with the act, and that no opinion is desired thereon.

The same sale being under consideration in the second question, the parties may make such agreement as they desire with reference to the official cotton standards of the United States, so far as any requirements of the cotton futures act are concerned.

Having still under consideration the same sale in your third question, (*a*) the use of the Carolina mill rules of 1914 does not subject the sale to the act; (*b*) and it does not seem necessary to reply to the query here made, as it would involve a careful consideration of the Carolina mill rules of 1914 in connection with a contract actually made subject to the act.

In answer to your fourth question, disputes referred to the Secretary of Agriculture for determination are provided for by the seventh subdivision of section 5 of the act and apply only to contracts made subject to the United States cotton futures act, section 5.

It is not necessary to discuss the cases supposed in the fifth question, because of the fact that the sales seem to be made by direct negotiations between the parties and without reference to any exchange, board of trade, or similar institution or place of business.

Considered apart from a hedge made through an exchange, any transaction mentioned in your sixth question which constitutes a sale of spot cotton is exempt from the tax imposed by the act, by reason of the clause referred to, contained in section 10. Furthermore, if the sale in question be not made at, on, or in any exchange, board of trade, or similar institution or place of business, it is not subject to the act, even though it does not constitute a sale of spot cotton. Your inquiry does not seem to present any question as to the hedge transaction.

It is believed that the statements above made fully answer the questions submitted, but they are merely expressions of my views, which may or may not be followed by the courts, and are made for whatever assistance they may furnish.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 19, 1915.

TINGED AND STAINED COTTON.

18.

SIR: You raise the question as to whether tinged and stained cotton can be delivered on section 5 contracts under the United States cotton futures act in the absence of the establishment by the Secretary of Agriculture of official standards for tinges and stains.

Subdivisions 3 and 5 of section 5 of the act, in part, read as follows:

Third. Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary of Agriculture except grades prohibited from being delivered on a contract made under this section by the fifth subdivision of this section and no other grade or grades. * * *

Fifth. Provide that cotton that, because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary,

or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, * * * shall not be delivered on, under, or in settlement of such contract.

It will be noted that subdivision 3 requires the cotton dealt with or delivered on a section 5 contract to be of or within the grades for which standards are established by the Secretary of Agriculture, and subdivision 5 provides that the grades mentioned therein, namely, Good Ordinary, Low Middling, and Middling, shall be of the official cotton standards of the United States. However, there is no specific requirement in the act that tinged and stained cottons delivered on such contracts shall conform to an official standard of the United States for tinges and stains, and nowhere in the act are tinges and stains referred to as grades. Unless tinges and stains are regarded as grades within the meaning of the act, there appears to be no prohibition in the act, except to the limited extent expressed in the fifth subdivision of section 5, against the dealing in and delivery of tinged and stained cotton under section 5 contracts in advance of the establishment by the Secretary of Agriculture, under section 9 of the act, of standards for tinges and stains.

It is believed that there is no uniform understanding among the cotton trade as to whether tinges and stains are separate grades or not. Some may so consider them; others regard them merely as independent qualities and not grades. On the other hand, it seems clear, from an examination of section 9 of the act, that Congress regarded grades as distinct from tinges and stains, since it authorized separately and exclusively the establishment of standards for *grade* and standards for *color*. Accordingly, for the purposes of the act, tinges and stains are not grades.

In view of the above, I am of opinion that, subject to the limitations prescribed by the fifth subdivision of section 5 of the act, tinged and stained cottons, which are of grades of the official cotton standards of the United States now established, may be dealt in and delivered on section 5 contracts in the absence of the establishment by the Secretary of Agriculture of standards for tinges and stains.

In this connection your attention is called to the statement in Service and Regulatory Announcements, No. 2, of this office, under date of February 13, 1915, that, until standards for tinges and stains are promulgated by the Secretary of Agriculture, this department, in determining disputes arising under the seventh subdivision of section 5, will be guided by the tentative types of tinges and stains of which copies have been furnished to your exchange, other exchanges, and the designated spot markets.

A photostat copy of the letter of the Commissioner of Internal Revenue, concurring in the above, is inclosed herewith.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

FEBRUARY 20, 1915.

SIR: I have examined your proposed letter of this date to ——— ———, in reply to his letter of the 16th instant, and in relation to tinged and stained cotton, and beg to advise you that, after careful consideration, I concur in the views expressed therein.

Respectfully,

W. H. OSBORN,
Commissioner of Internal Revenue.

FEBRUARY 20, 1915.

TENDER OF UNDELIVERABLE COTTON.

19.

GENTLEMEN: Your letter of March 5, 1915, is received.

You state the following case:

A is short to B 100 b/c May contracts.

A tenders 100 b/c which B considers not up to class, and appeal is made to Washington.

Washington decides that 90 bales are up to the class A contends, but that 10 bales are below deliverable class.

Upon this state of facts you request my opinion upon the following questions:

1. Can A complete his contract by delivering 10 other bales of deliverable cotton?

2. Is A penalized under the Lever bill for tendering the 10 b/c below the deliverable class, and if so, to what extent?

It is assumed that the contract to which you refer is a contract of sale of cotton for future delivery, entered into on an exchange in compliance with section 5 of the United States cotton futures act of August 18, 1914. (38 Stat. L., 693.)

With reference to your first question, it is my view that there is nothing in the act, or in the regulations thereunder, which would prevent A, under the circumstances set forth, from completing his contract by delivery of 10 other bales of deliverable cotton.

Whether A has a right to make such supplemental delivery at all, or only under certain conditions, is a question of interpretation of the particular contract, and of the by-laws and rules of the exchange which are made a part thereof. This is a question that must be determined by the parties to the contract, and, even with all the facts before me, I would not feel warranted in expressing an opinion thereon.

In answer to your second question, it is believed that the mere tender on a section 5 contract, under the above circumstances, of the 10 bales of cotton that are found to be below deliverable class, would not of itself subject the contract or the parties to the taxing or penal provisions of the act.

You will understand that this department has no authority to determine the questions presented by you. The above are merely my views thereon, which may or may not be accepted by the courts, and are given to you for such assistance as they may furnish.

Very truly yours,

CHARLES J. BRAND,
Chief Office of Markets and Rural Organization.

MARCH 18, 1915.

QUOTATIONS.

20.

SIR: Referring to your and ——— ———'s letters and telegrams of the 15th and 16th instant, there are submitted below this department's views upon each point raised therein.

You ask:

1. Must we use all the markets named, and what shall be our procedure in the event that Boston or Fall River or any other market fail now or hereafter to quote?

2. Can we make up our averages on those received, if at a reasonable time in the afternoon we have not heard from any market?

3. There is no provision where occasionally for physical reasons, as, for instance, a storm and wires are down, what are we to do? May we use the last quotations received?

These three questions may be answered jointly, since they involve the same problem.

From a business standpoint, it may be important that, on the day when a transferable notice is issued under a section 5 contract, the exact commercial differences in value of the different grades of cotton on the last preceding business day in each of the spot markets designated in section 2 of regulation 3 of the Rules and Regulations of the Secretary of Agriculture under the United States cotton futures act, be known to the person issuing the notice. The act, however, is not concerned as to whether these differences are accurately ascertained and taken into account when the transferable notice is issued, or not. It requires the use of these actual commercial differences only in the settlement of a section 5 contract, which will occur no earlier than the business day on which the five days' notice expires.

It will probably be very infrequent, certainly after the scheme of the act gets well into operation, that you will fail to receive on a given day adequate quotations for that day from all of the spot markets designated in section 2 of regulation 3, in time to consult them before issuing transferable notices on the succeeding business day. However, if on a given day your quotation committee is unable to secure, for posting at the usual time, accurate and complete information as to the commercial differences in any one of such designated spot markets, there is nothing to prevent the committee from approximating these differences in any way it sees fit, for the guidance of your members in issuing transferable notices. In such cases, it might be well for the committee to give public notice to your members that its differences are based on partial returns, and to state that they are subject to correction upon receipt of definite information from the spot markets for which the quotations are missing.

In any event, it is believed that, for the purpose of the settlement of section 5 contracts, you are bound to ascertain and use the actual commercial differences in every one of such designated spot markets in accordance with the requirements of section 6 of the act.

As you now know, Fall River, Mass., was on February 18, 1915, stricken from the lists of spot markets in sections 1 and 2 of regulation 3. Boston is now furnishing you regular quotations. Thus, the difficulties which you indicate with respect to these two markets have been removed.

You ask:

4. Can we use a quotation such as we received yesterday, "Middling Fair 8.50 nominal"?

Quotations, such as you cite, which you term "nominal," that are reported by spot markets designated under section 2 of regulation 3, may be used in making up the commercial differences to be applied in the settlement of a section 5 contract, if such quotations are actually arrived at in that market by the application of regulation 4. Regulation 4, under the authority of and in accordance with the second proviso of section 6 of the act prescribes that whenever, on a given day, there is no sale of a particular grade in a designated spot market, its value therein on that day, for the purpose of calculating commercial differences in the settlement of section 5 contracts, shall be determined in accordance with that regulation. It is immaterial whether the determination, if in fact it is in compliance with regulation 4, is made by the spot market, and the result alone furnished to you, or is made by your exchange upon data furnished to you by the spot market. In either case the value so arrived at could be used for the purpose of calculating differences in the settlement of section 5 contracts.

The department is endeavoring to induce each of the designated spot markets to report the values of grades for which no sales have been made therein on a given day, in accordance with the requirements of regulation 4, so that future markets may safely use the so-called "nominal" quotations of such spot markets.

You ask:

5. Can we use such a quotation as we received yesterday, "Mid. Fair 8.37½ to 8.50"?

It is believed that the quotation you describe is not in such form that you could use it in calculating commercial differences to be applied in the settlement of section 5 contracts. Before a quotation can be so used it must be specific, and it would seem that a definite value for a particular grade must be found.

The department has requested the spot markets to give definite quotations hereafter and it is hoped that the defect in quotations to which you refer may not occur again.

You state:

6. The regulations seem to omit to provide for a case where there have been no sales of many grades and provide only for the next lower or higher grade. Are we to carry the same method on down or up to obtain all quotations?

A careful reading of regulation 4 will show that you have misinterpreted its language. The words "the next higher grade and the next lower grade so sold," occurring therein,

do not mean the immediately adjacent higher or lower grade, as the case may be, in a complete series, but refer merely to the next higher or next lower grade actually sold, whether it be immediately adjacent in the full series or not. For instance, if there were sales of Strict Low Middling and Good Ordinary, but no sales of Low Middling or Strict Good Ordinary, and it were sought to determine the value of Strict Good Ordinary, then Strict Low Middling would be regarded as the next higher grade and Good Ordinary the next lower grade actually sold within the meaning of regulation 4.

You state:

7. Holidays differ in various States. February 23 is a notice day here. We presume we must make our quotations on February 20, the first preceding business day with us. Is this correct?

Section 6 of the act, which prescribes the rules for ascertaining differences to be used in settling section 5 contracts in a future market that is not itself a spot market within the meaning of section 7, provides that they shall be determined by the average actual commercial differences "upon the sixth business day prior to the day fixed * * * for the delivery of cotton on the contract." Hence, in your market, if a notice were given on February 23 and the last business day preceding February 23 was February 20, the commercial differences would be ascertained by taking the average of the values on February 20 in the spot markets designated in section 2 of regulation 3. In that case, it would be immaterial whether in all or any of such spot markets February 20 was a holiday or not.

You state:

8. February 17 is a holiday in Norfolk, for instance. In making a revision on that date we presume we are to use their differences of February 16. Is this correct?

Norfolk being one of the spot markets designated in section 2 of regulation 3, the differences therein for February 16 should be used on February 17 in case the latter date is a holiday in Norfolk.

As is indicated in Service and Regulatory Announcements No. 2 of this office issued February 13, 1915, the opinions of this department as to the true meaning of the statute are not binding on the public. The interpretation of the law rests finally with the courts. Nevertheless, the department is glad to give whatever assistance it can in arriving at the proper construction of doubtful clauses.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

FEBRUARY 20, 1915.

BASING PRICES IN SPOT TRANSACTIONS ON FOREIGN FUTURE QUOTATIONS.
21.

DEAR SIR: Your letter of February 16, asking my views regarding two questions arising under the United States cotton futures act of August 18, 1914 (38 Stat. L., 693), is received.

The first question upon which you desire my opinion is stated by you as follows:

If I receive an offer from a firm in Liverpool for a certain number of bales at a specified price, c. i. f. and 6 per cent to Liverpool, and I accept their offer and ship the cotton, am I liable to a tax? On a sale of this sort there are no "futures" connected with it as far as the seller is concerned, as he sells the cotton to the Liverpool importer just as he would to a New England mill, and whether the Liverpool importer sells futures against his purchase is a matter of no interest to the seller.

Section 11 of the act, which is the only section thereof that imposes a tax under any circumstances, in cases of transactions between persons within the United States and persons in foreign countries, provides:

That upon each order transmitted or directed or authorized to be transmitted, by any person within the United States for the making of any contract of sale of cotton

grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, there is hereby levied an excise tax at the rate of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract: *Provided*, That no tax shall be levied under this act on any such order if the contract made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section five, or with all the conditions specified in section ten of this act, except that the quantity of the cotton involved in the contract may be expressed therein in terms of kilograms instead of pounds.

It will be noted that the tax imposed by section 11 is neither upon the sale of cotton for shipment abroad, nor upon its shipment abroad. It is imposed only upon the order from the United States to a foreign country for the making of a contract of sale of cotton grown in the United States for future delivery, and then only in case the contract for which the order is given is, or is to be, made at, on, or in any exchange, board of trade, or similar institution or place of business in a foreign country.

In the case described, an offer is received by you from a firm in Liverpool to buy a certain number of bales of cotton at a specified price. Your only participation in the transaction consists in your acceptance of the offer, involving your communication thereof to the firm in Liverpool, your shipment of the cotton purchased, and your receipt of payment therefor.

It seems clear that on no occasion in which you have taken part in the transaction have you transmitted or authorized to be transmitted abroad an order for the making of a contract of sale of cotton grown in the United States for future delivery at, on, or in a foreign exchange, board of trade, or similar institution or place of business, so as to subject yourself to the taxing provisions of section 11 of the act. The fact that the Liverpool importer sells futures on the Liverpool exchange against his purchase from you is immaterial in this case. The hedge is made at his own instance and not in pursuance of any order from you, and would not subject the transaction described by you to taxation under the act.

The second question presented by you is as follows:

Another question that has been discussed considerably on our exchange is "On Call Sales." By this you of course understand that if a shipper in America receives an order from a firm in Liverpool, for example, as follows: 40 points on May/June for 500 bales Fully Middling c. i. f. and 6 per cent Liverpool, April shipment, and the shipper accepts this offer, and receives a cable from Liverpool the next morning that they have fixed the price at, we will say 5d., which was the opening of May/June on the Liverpool market that morning, this would make the invoice price of the cotton 5.40, less, of course, freight and other expenses. The point that we wish definitely settled for us by your department is, does a trade of this sort come under the provisions of "The act on account of the buyer in Liverpool selling futures against purchases." You understand the seller in America never owns the futures, and has no further interest in them whatever beyond the fixing of the price.

The transaction described by you in the second question is substantially the same as that set out in your first, except that in the second case the purchase is made at a certain number of points on or off Liverpool futures instead of at a specified price. In both cases it appears that the Liverpool importer sells futures on the Liverpool exchange against his purchase.

For the reasons set forth in the answer to your first question, it is my opinion that the transaction last described would not come within the taxing provisions of the act, notwithstanding that the purchase is fixed at so many points off or on Liverpool futures, and that the buyer in Liverpool at his own instance sells futures on the Liverpool exchange against his purchase.

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

FEBRUARY 24, 1915.

ORDERS FOR MAKING FOREIGN BASIS FUTURE CONTRACTS ON EXCHANGES.

22.

DEAR SIRS: I wish to acknowledge the receipt of your letter of the 13th instant and to say in reply that a set of the new official cotton standards was shipped you, as you have heretofore been advised, on the 20th instant.

You state that you have seen recent newspaper reports to the effect that under the United States cotton futures act, spot dealers can not sell cotton abroad after February 18, for Liverpool or Bremen arbitration, without paying a tax of 2 cents per pound; that you are not dealers in futures, but are purely spot people, having a large trade in Europe; that you are anxious to continue your business, and desire my opinion as to whether you may do so without being liable to the tax imposed by the act.

The department has received information from time to time showing that there have been circulated in this country and abroad, particularly among merchants in designated spot markets and foreign exchange members, various reports and opinions that are likely to create misapprehension in the minds of the public as to the scope and operation of the United States cotton futures act. While the final interpretation of the act rests with the courts, and the opinions of this department construing it have no binding force, yet the department aims, by giving its views, to correct such misapprehensions, as far as possible, and is always glad to assist the public in reaching a proper understanding of the act.

Section 11, which is the only section of the act which imposes a tax under any circumstances in cases of transactions between persons in the United States and persons in foreign countries, provides:

"That upon each order transmitted, or directed or authorized to be transmitted, by any person within the United States for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, there is hereby levied an excise tax at the rate of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract: *Provided*, That no tax shall be levied under this act on any such order if the contract made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section five, or with all the conditions specified in section 10 of this act, except that the quantity of the cotton involved in the contract may be expressed therein in terms of kilograms instead of pounds."

This section does not impose any tax either on the sale of cotton for shipment abroad or upon its shipment abroad. The tax is only on the order that is transmitted, or authorized to be transmitted, from the United States to a foreign country for the making of a contract of sale of cotton grown in the United States, and then only in case the contract for which the order is given (1) involves the element of future delivery, and (2) is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in a foreign country.

It appears that the transactions which you describe are merely sales to foreign purchasers of cotton for shipment abroad. They may, in some cases, involve the element of future delivery, but it is understood that they are not made at, on, or in a foreign exchange, board of trade, or similar institution or place of business, and that nowhere in the course of these transactions is an order transmitted, or authorized to be transmitted by you, from the United States to a foreign country for the making of a contract of sale such as that described in section 11 of the act. It is accordingly my opinion that the transactions with foreign purchasers, such as you refer to, are not subject to the taxing provisions of the act, and that you may continue such business without hindrance on its account.

Orders from the United States to a foreign country for the making of contracts of sale of cotton grown in the United States for future delivery, such as hedges, on foreign exchanges, are now taxable under section 11 of the act. However, under the proviso to that section, such orders may be exempted from the tax imposed if the contracts

made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section 5, or with all the conditions specified in section 10 of the act. It appears that none of the foreign exchanges has yet authorized a form of contract complying with either set of the conditions specified. Should any foreign exchange adopt such forms of contract, orders may then be sent abroad for the making of such contracts on such exchange without liability to any tax under the act.

Your letter of February 22 has also been received. I thank you for your cooperation in the matter of furnishing reports, and also appreciate your opinion on the new forms. Some of the firms have felt that on account of missing several days in their reports they had best discontinue them. This is not at all the case, as on days when one firm fails to report another does report, completing our series in a measurable fashion.

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

FEBRUARY 24, 1915.

CONCERNING EXTENT TO WHICH THE FINDINGS OF THE SECRETARY OF AGRICULTURE ARE CONCLUSIVE.

23.

DEAR SIRS: Your letter of March 24, 1915, is received.

You say, in substance, that you understand that the findings of the Secretary of Agriculture as to the grade, quality, or length of staple of cotton, in a dispute referred to him under the United States cotton futures act, will be binding in the event that you wish to deliver the cotton at some future time on a contract made under section 5 of the act. You further say, in reference to pending disputes between yourselves and ———, arising under a contract made prior to February 18, 1915, that if a decision of this department would be of no force beyond an expression of its opinion, it would not meet your purpose.

The seventh subdivision of section 5 of the act prescribes the cases in which disputes may be referred to the Secretary of Agriculture. In the last paragraph of the section it is provided that—

* * * his findings, upon any dispute referred to him under said seventh subdivision made, after the parties in interest have had an opportunity to be heard by him or such officer, officers, agent, or agents of the Department of Agriculture as he may designate, shall be accepted in the courts of the United States in all suits between such parties, or their privies, as prima facie evidence of the true quality, or grade, or length of staple, of the cotton involved.

This provision is an adaptation of a similar clause in the Interstate Commerce Commission act, making findings of the Interstate Commerce Commission in reparation proceedings prima facie evidence of the facts in law suits between the parties. That clause in the Interstate Commerce act was recently discussed, and held valid by the Supreme Court of the United States in the case of *Meeker* v. *Lehigh Valley Railroad Co.*, decided February 23, 1915.

It is the view of this department that the finding of the Secretary of Agriculture is not "binding" even upon the parties to the dispute, in respect to their rights arising out of the identical contract under which the dispute arose, to any greater extent than that specified in the statute. If, therefore, your question is as to the effect of the finding upon the parties themselves, then I must answer that, in my opinion, not only is the finding not binding so far as concerns future and other transactions involving the cotton, but it is not even binding in the particular transaction in which the dispute occurs, except in the sense already explained.

If by your inquiry you mean to ask my opinion as to the extent, if any, to which this department will adhere, in subsequent disputes, to a finding of grade, quality,

or length of staple previously made in a dispute in respect to the same cotton, that raises wholly different considerations.

In the first place, either party to a contract made in conformity with section 5 of the act may, as a matter of right, in accordance with the seventh subdivision of that section and the regulations prescribed pursuant to the act, refer to the Secretary of Agriculture a bona fide dispute arising under that contract between the parties thereto as to the grade, quality, or length of staple of the cotton tendered.

In the second place, I can assure you that the department will endeavor correctly to decide each dispute referred to it. If between the times of hearing two disputes involving the same cotton there should occur a change in the cotton affecting the issues referred to the department for determination, it would obviously be its duty to make a finding in the subsequent dispute different from the finding in the earlier dispute. On the other hand, if, meanwhile, there had been no change in the cotton, or there existed no substantial reason for believing that the department's first decision was erroneous, it would seem fairly certain, within the limits of the frailty of human judgment, that the findings in the subsequent dispute would be the same as those in the earlier dispute. Naturally, in the interest of the public, as well as in the interest of the department itself, every effort will be made to avoid waste of the time and energies of the employees of this office on useless matters or on fictitious controversies.

It is the apparent purpose of the act, by conferring on the Secretary of Agriculture authority to hear and determine disputes, to afford to parties to controversies, in respect to the kind of cotton tendered on contracts under section 5, an ultimate recourse that, at least eventually, will bring about uniformity, and that in all cases will enable a trader on a cotton exchange to protect himself from being compelled to accept cotton made nontenderable by the statute. If the rules of the exchange be adjusted to this interpretation of the statute, there would seem to be no occasion for ceasing to use the classification machinery heretofore used by the exchanges. If there be no reason to doubt the correctness of the classification of a particular lot of cotton, there is no occasion for a dispute about it. As explained in sundry letters published, or about to be published, in the Service and Regulatory Announcements of this office, it is the opinion of this department that the rules of an exchange can not make the decisions of its classification committee or inspection bureau as to the grade, quality, or length of staple of cotton tendered on a section 5 contract final and conclusive upon the parties to the contract without violating the express provision of the statute that either party to such a contract may refer to the Secretary of Agriculture a dispute in respect to such a matter. If this right to refer such a dispute is to be preserved to every party to a contract of that character, then it necessarily follows as a corollary that he must be permitted in his certificate or notice of grade, quality, or length of staple to specify his own contention. If he were restricted by the rules of the exchange to tendering only on the certificate furnished to him by the exchange committee or bureau, obviously he would be deprived of an express right given him by the statute.

Of course, if the decisions of the exchange committee or bureau as to the grade, quality, or length of staple of cotton are correct, they ought to be, and it is believed in practice, within the limits of human judgment, will be uniformly affirmed by the Secretary of Agriculture.

So far as I can gather from correspondence with you, and with many other exchange members, there has been a widely prevalent assumption that there are only two alternatives open to exchange members and that they must, as a matter of law, or for business reasons, regard either the decision of the exchange committee or bureau, or the finding of the Secretary of Agriculture, as to the grade, quality, or length of staple of cotton as finally and conclusively binding on them under section 5 contracts. Because this assumption seems to this department to be wholly without foundation, I have written you at considerable length as to the views of the department.

For all practical purposes, it is believed that the findings of the Secretary of Agriculture as to the grade, quality, or length of staple of cotton tendered on a section 5

contract, will, in most cases, be treated by interested persons as final. This, however, will result from voluntary action, not from any express requirements of the law. The parties to the particular contract, out of which a dispute arises, or their privies, will seldom refuse to accept the findings in fulfilling or settling their contract, since otherwise, unless they agreed upon a settlement, the case would have to be taken into the courts, and they would face the strong probability that, with the statutory presumption in favor of the findings, they would be held correct. In case a tender, based on the findings of the Secretary of Agriculture, regarding the same cotton, is made on some other or subsequent contract, it would seem that the person receiving the tender, if he had knowledge of such findings, would seldom question their correctness in view, likewise, of the strong probability that the determination of the Secretary would be sustained in a subsequent dispute referred to him, or in an action in the courts, unless the party could produce convincing evidence of their error as applied to the cotton at the time of the tender in question. In other words, the stability and binding effect of the findings must rest on their correctness, and on the strong unlikelihood that the Secretary's determination would be overturned if the question were referred again to him or were taken into the courts.

Section 25 of regulation 2 is designed to facilitate the conduct of business by the parties to disputes. If they care to act upon the memoranda, required by that section to be issued, in advance of formal findings by the Secretary of Agriculture, the furnishing of the memoranda promptly will enable them to do so; but the formal findings of the Secretary himself are, by section 5 of the act, made the official expression of this department's decision as to the grade, quality, or length of staple of cotton involved in disputes.

What has been hereinbefore said is in reference to disputes arising under contracts made on or subsequent to February 18, 1915. While the Secretary will not issue formal findings in disputes arising under contracts made prior to February 18, 1915, this department will, as you have been already advised, make like investigations as to the grade, quality, or length of staple of cotton involved in contracts of this character as it will make in the case of a contract made subsequent to February 18, 1915, and will furnish to the parties information as to its conclusions in the form of memoranda.

With this explanation, please inform me whether you desire the department to proceed to a determination of the pending disputes between yourselves and ———. A copy of this letter is being forwarded to them and they are being asked also to say whether they wish the department to proceed.

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 29, 1915.

24.

TREASURY DECISION.

(T. D. 2177.)

UNITED STATES COTTON FUTURES ACT.

Disputes arising upon the delivery of cotton made upon a contract under section 5 of the United States cotton futures act must be settled by the courts, except disputes as to grades, quality, or length of staple of the cotton involved, which may be determined by the Secretary of Agriculture.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 15, 1915.

GENTLEMEN: This office is in receipt of your letter of the 6th instant, inclosing copies of certain correspondence between yourselves and Messrs. ——— ——— relative to a dispute arising upon the delivery of cotton made upon a contract under section 5 of the United States cotton futures act, and requesting a ruling upon the question involved in the correspondence.

In reply, you are advised that, as it is understood from the correspondence, the contract conforms to section 5 of the United States cotton futures act. Any dispute arising under such contract must be settled by the courts in an action thereon, except that disputes as to grade, quality, or length of staple of the cotton involved may be determined by the Secretary of Agriculture, and his findings in such case will be given the effect of prima facie evidence in the courts of the United States. This office has no authority to make a ruling upon the question involved in your controversy.

This office is interested in the terms of the contract and its conformity with the provisions of the United States cotton futures act, and the regulations prescribed thereunder by the Secretary of the Treasury and the Secretary of Agriculture, but it is not concerned with the manner in which the parties fulfill their obligations under the contract, the latter being a matter for determination between the parties themselves, either amicably or through the courts. If the contract conforms to the requirements of the act and the regulations thereunder so as to exempt it from taxation, the failure by either party to live up to the obligations it imposes does not render it taxable, although it may afford grounds for civil action for damages by the injured party.

It may be stated, however, that in the view of this office, the rules of the exchange which are made part of a future contract entered into thereon may provide that the cotton involved must be inspected and classified by the exchange before tender is made, without offending against the provisions of section 5 of the act or the rules and regulations prescribed thereunder; but in order not to conflict with the statute or the regulations thereunder nothing must be included either in the contract or in the rules of the exchange that would impair the right of a party in case he is dissatisfied with the result of the exchange inspection and classification, to tender cotton under the contract on his own notice or certificate and get the question of its grade, quality, or length of staple before the Secretary of Agriculture for determination in case of dispute with the party receiving the tender

Respectfully,

DAVID A. GATES,
Acting Commissioner of Internal Revenue.

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U. S. DEPARTMENT OF AGRICULTURE,

OFFICE OF MARKETS AND RURAL ORGANIZATION.

CHARLES J. BRAND, Chief.

SERVICE AND REGULATORY ANNOUNCEMENTS.

No. 5.

CONTENTS.

1. THE UNITED STATES COTTON FUTURES ACT.[1]

By Francis G. Caffey,
Solicitor, U. S. Department of Agriculture.

[Address delivered before the Alabama State Bar Association at Montgomery, Ala., July 10, 1915.]

For more than 30 years there has been in progress a gradual, but steadily increasing, extension in the types of Federal legislation affecting, and in greater or less degree governing, the conduct of business. Conspicuous illustrations of this are the Interstate Commerce Act and amendments thereto, the Sherman Antitrust Act, the Federal Reserve Banking Act, the Federal Trade Commission Act, and the Clayton Antitrust Act. Among the less familiar, but important, illustrations may be cited the Diseased Animal Transportation Acts of May 29, 1884[2], and February 2, 1903,[3] regulating the movement of diseased live stock in interstate and foreign commerce; the

[1] Subsequent to the preparation of this paper two suits to test the constitutionality of the act were filed in the United States District Court for the Southern District of New York.

[2] 23 Stat., 31.

[3] 32 Stat., 791.

Lacey Act of May 25, 1900,[1] codified in the act of March 4, 1909,[2] intended, by the regulation of interstate shipments of game, to assist the States in the conservation of the game supply of the United States, and to check the importation of birds and animals that may be injurious to agriculture or horticulture; the Cattle Quarantine Act of March 3, 1905,[3] authorizing the establishment of quarantine districts on account of diseases of live stock, and regulating the movement in interstate commerce of live stock from such quarantined areas; the Twenty-Eight Hour Act of June 29, 1906,[4] regulating the time of confinement in cars, boats, or vessels of live stock transported in interstate commerce; the Meat-Inspection Act of June 30, 1906,[5] under which has grown up an effective system of Federal supervision of the slaughtering of approximately 60 per cent of the cattle, sheep, swine, and goats killed in this country, and the preparation therefrom of meat food products, with the view of safe-guarding the health of the people; the Food and Drugs Act of June 30, 1906,[6] designed to prevent deception occasioned by improper labeling of foods and drugs, and to protect health; the Insecticide Act of April 26, 1910,[7] prohibiting the shipment in interstate and foreign commerce of insecticides, Paris greens, lead arsenates, and fungicides, which are adulterated or misbranded within the meaning of the act; the Plant Quarantine Act of August 20, 1912,[8] providing for the establishment of quarantine districts on account of the existence of plant diseases and insect pests, regulating the movement in interstate commerce, from such quarantined areas, of nursery stock and other plants and plant products, and governing the importation thereof; the Virus Act of March 4, 1913,[9] regulating the importation and interstate shipment of viruses, serums, toxins, and analogous products intended for use in the treatment of domestic animals; the Migratory Bird Act of March 4, 1913,[10] regulating the killing of insectivorous and other birds which migrate from one State or Territory to another; the imported meat paragraph of the Tariff Act of October 3, 1913,[11] prohibiting the importation of unwholesome meats, and prescribing the same rigid conditions for imported meats as the Meat-Inspection Act prescribes for domestic meats; the United States cotton futures Act of August 18, 1914,[12] taxing, and regulating, as incidental to the tax, certain future transactions in cotton on exchanges, boards of trade, and similar institutions or places of business; and the Anti-narcotic Act of December 17,1914,[13] taxing, and regulating, as incidental to the tax, the importation, manufacture, and sale of opium and its derivatives.

Most of the statutes of this kind are predicated upon the power of Congress to regulate interstate and foreign commerce; a few are based on the tax clause of the Constitution.

Much of what is embodied in the laws mentioned had not previously been the subject of governmental attention. Much, however, particularly of the class which has been denominated less familiar, long before Congress undertook to deal with it, had been covered by State legislation. The turning from the States to Congress is significant. It is hardly open to dispute now that the exercise of its powers by Congress, both in fields theretofore partly occupied by the States and in fields wholly new, was in response to definite public sentiment. Federal action has not merely been acquiesced in; it has been distinctly requested by the people. The demand came from practically all quarters; from those in which, at various periods of our history there existed jealous guardianship of what were regarded as the rights of the States as distinguished from the rights of the Federal Government, as well as from those in which there has always been strong feeling that the National Government has, and ought to exercise, authority over many matters with which it had never before concerned itself.

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[1] 31 Stat., 187.
[2] 35 Stat., 1088, 1137.
[3] 33 Stat., 1264.
[4] 34 Stat., 607.
[5] 34 Stat., 674.
[6] 34 Stat., 768.
[7] 36 Stat., 331.
[8] 37 Stat., 315.
[9] 37 Stat., 828, 832.
[10] 37 Stat., 828, 847.
[11] 38 Stat., 114, 152, 159.
[12] 38 Stat., 693.
[13] 38 Stat., 785.

What is the explanation of this change of popular attitude? Speaking generally, it seems to have been due chiefly to two causes: (1) A desire for uniformity, for parities in the law itself which, on account of jurisdictional difficulties, the States can not maintain; (2) an impression that the Federal Government performs its undertakings more efficiently than the States do theirs.

As the number of States has increased, and the area within the continental United States over which the Federal Government has exclusive jurisdiction has been reduced, people doing business in many States, and people affected by the course of prices in similar transactions conducted in many States have felt acutely the inconvenience of the variations in the legal requirements, of 48 separate sovereignties. This has been especially true in the case of large interstate corporate enterprises, but in a hardly less degree with respect to numerous kinds of commodities whose production and distribution, though handled by different individuals or classes, were in widely separated parts of the country. The progress of the movement for uniformity of State laws, for the promotion of which so much has been done by bar associations, was not sufficiently rapid or effective to meet the wishes of the people. Changes in the law are proverbially slow. Those immediately most adversely affected by the divergence in State laws accordingly grew impatient, as the inconvenience was more clearly demonstrated, and created a great body of sentiment in favor of relying no longer upon the States; of going to Congress for laws which operate alike, throughout the country, irrespective of State lines.

The proportions of some, if not all, of the products affected by such of these new Federal statutes as were framed under the commerce clause which actually enter, or at the time of their manufacture or preparation are potential subjects of, interstate or foreign commerce, are very large. The percentages of those remaining for exclusive intrastate handling which do not voluntarily conform to Federal laws, or are not controlled by the laws of States which have followed the example of the Federal Government, are usually, in fact, negligible. The consequence is that this Federal legislation has become well-nigh universal in its effect; in practice, it is applied to an extent much greater than Congress could require.

Congress has shown that it prefers to secure uniformity in legal requirements by employing the authority granted it by the commerce clause. The fact that, in so many instances, this end has been substantially attained by that means doubtless accounts for the frequency of the exercise of Federal jurisdiction over interstate and foreign commerce when another constitutional power might have been employed. At the same time there has been no definite unwillingness to enact tax statutes, in their nature of full force intrastate as well as interstate, whenever they have appeared to be necessary to accomplish the purposes intended.

Whether or not the United States is actually more efficient than some of the States in the enforcement of law may be debatable. There is, however, a widespread feeling that it is more efficient; that Federal legislation procures more effective results than State legislation. Some of the reasons assigned for this belief are that the Congress is more remote from the people than the State legislatures, is composed of members from widely separated sections of a much greater area than a single State, whose constituents are diversely affected, is more deliberate in responding to public sentiment, is apt not to enact a new statute until after a well-ascertained demand for it; that, likewise, the Federal courts are less subject to local influences and prejudices; that Federal authorities are accustomed more adequately to execute Federal statutes than State authorities are to execute State statutes; and, what is not an inconsiderable factor, that, whereas some States are illiberal, not infrequently parsimonious, and others are financially poor, when the Federal Government undertakes a matter it customarily supplies its officials with ample means to enable them to carry out its directions.

No competent student of Federal legislation will deny that Congress is far from having exhausted its powers in dealing with business. Whether there shall be further widening of the exercise of those powers is a political, rather than a legal, question. But the application of Federal laws to new subjects in recent years has rarely involved any novel legal principle. The sustaining precedents usually run back almost throughout the history of the Supreme Court of the United States. The questions arising on the statutes are nearly always mere matters of interpretation and exposition, with a view to ascertaining whether well-settled existing court decisions determine them.

The United States cotton futures Act is a fair example of this tendency of, and toward, Federal legislation.

State laws relating to the purchase and sale of cotton for future delivery have failed to accomplish their intention. They have been various in form;[1] but their prevailing assumption is that dealing in cotton futures is gambling, because it is a guess or bet on the value of an article not in possession, frequently not even grown or planted, and is therefore wrong, morally or economically, or both. The cotton exchanges have encountered little difficulty in adjusting their rules to these statutes. In general, by the use of a system of symbols for actual cotton, they have theoretically eliminated transactions in nonexistent commodities and thereby stripped from the business the features which State laws declare to be unlawful. In addition, the Federal Constitution is an undoubted embarrassment to the drafting of effective legislation by a State, aimed to correct some of the effects of dealing in cotton futures, which are conceded to be evil.

The consumption of cotton is remote from the places in which it originates. An overwhelming percentage of it moves in interstate or foreign commerce. The prices to producers are inevitably influenced, and in large measure fixed, by transactions in States other than those in which it is grown and in foreign countries. The prices producers receive for spot cotton in primary markets are almost entirely dominated by quotations on future exchanges. For many years a large proportion of the membership of both spot and future exchanges have felt that there were abuses in the methods prevailing on some or all of the future exchanges. Contemporaneously, the feeling among producers and spinners that they were unfairly treated had been deep and becoming widespread. Facts of this kind ultimately led Congress to comply with the long-standing demand for an attempt by it to afford relief.

At nearly every session of Congress since 1884, bills dealing with the regulation of cotton futures have been introduced. A schedule of 120 of these has been made. (See note at end.) They have generally been based upon the post office and post roads, or the commerce, or the tax, clause of the Constitution. Previous to the Sixty-third Congress, three passed the House. Another, the Hatch bill,[2] passed both Houses at the Fifty-second Congress, and failed only because of a parliamentary situation in the House, in which it originated; near the end of the session, in March, 1893, the test vote on certain Senate amendments, resulting in 172 ayes to 124 noes, was taken under a rule which required two-thirds, not a majority only, for affirmative action.[3]

At the first session of the Sixty-third Congress the Senate incorporated in the tariff bill a clause, known as the Clarke amendment,[4] imposing a tax, at the rate of 50 cents

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[1] Alabama, Code of 1907, secs. 3345, 3349–3353; Arkansas, Acts of 1907, No. 162, approved Apr. 11, 1907, Castle, Annotated Statutes, 1911, secs. 1753a to 1753o, inclusive; Florida, Act of June 3, 1907, ch. 5680, Florida Compiled Laws, Annotated, 1914, secs. 3713h to 3713p, inclusive; Georgia, Park's Annotated Code, secs. 4117, 4257–4264; Louisiana, Acts of 1898, No. 16, p. 20; Mississippi, Code of 1906, secs. 1201, 1202, 2303, Laws of 1908, ch. 118, p. 120; Missouri, Revised Statutes 1909, secs. 4780–4788; North Carolina, Pell's Revisal of 1908, secs. 1689, 3823; South Carolina, Code of Laws 1912, vol. 2, secs. 262–270; Tennessee, Acts of 1883, ch. 251, Shannon's Code of 1896, secs. 3166–3170; Virginia, Acts of Assembly, 1908, ch. 344, approved Mar. 14, 1908.

H. R. 7845.

[3] Congressional Record, vol. 24, pt. 3, p. 2358.

[4] No. 609 to H. R. 3321.

a bale (of 500 pounds), on each sale of cotton for future delivery, equivalent to $50 on each so-called exchange contract, involving 100 bales. The Senate receded from its insistance upon that provision only after the House had shown clearly that it favored some action on the subject, but disagreed as to the particular method proposed, and indicated strongly that the matter would be taken up comprehensively at the next session.[1]

Some of the bills passed by the House were intended to drive, and, if they had become law, probably would have driven, future cotton exchanges out of existence. Notable among these were the Scott bill [2] at the Sixty-first Congress, in 1910, and the Beall bill [3] at the Sixty-second Congress, in 1912. The Clarke amendment, so strenuously urged by the Senate in 1913, was designed to destroy, and it is currently believed, if enacted, would effectively have destroyed dealings in cotton futures on exchanges. Indisputably, this result could have been legally accomplished by a statute based on the Federal Government's power of taxation. A law of that kind would have been sustained by the long-standing precedent of the act of 1866,[4] applying a prohibitive tax on the circulation of State bank notes, held constitutional by the Supreme Court of the United States in Veazie Bank *v.* Fenno.[5] Another precedent, so far uncontested, would have been the Phosphorous Matches Act of 1912.[6] It is also significant that the votes on the Hatch bill showed that a majority of each House, more than 20 years ago, favored drastic action on the subject.

When the second session of the Sixty-third Congress convened, the situation was that each House had previously gone squarely on record separately as desiring a wholly destructive measure. A great deal of sentiment in favor of wiping out future cotton exchanges still persisted in both Houses. Investigation, however, had impressed, or further consideration did impress, a majority that properly regulated exchanges had an important and useful economic office to perform, which it might be possible to continue. The bill which finally became law on August 18, 1914, was, accordingly, constructive; designed to preserve the good, and remove the evil, features of transactions as then conducted. The unanimity with which, at the hearings before the House Committee on Agriculture, the bill was approved is notable. Its enactment was urged on behalf of producers, merchants, and spinners. It was also substantially indorsed—there was no material dissent in principle, or to any large extent in detail—by the representatives of the great future exchanges at New York [7] and New Orleans.[8]

After opportunities had been afforded to all interests to express their views, the committee made an illuminating report. This ought to be read by anyone concerned with the details of the circumstances under which the Cotton Futures Act grew into being. The committee also availed itself of the results of investigations which had been carried on for some years by the Department of Commerce,[9] and by the Department of Agriculture.[10]

The substance of the committee's findings of the general facts may be briefly summarized thus: Exchanges, in their original conception, are essentially useful institutions, capable of performing great service for the country. The price of cotton is so variable that hedges constitute the only effective means by which merchants and manufacturers may avoid speculation, and confine themselves to their own

[1] Congressional Record, vol. 50, pt. 6, pp. 5275–5289, 5347, 5431–5438.
[2] H. R. 24073.
[3] H. R. 56.
[4] 14 Stat., 146.
[5] 8 Wall., 533.
[6] 37 Stat., 81.
[7] Hearings, Apr. 22 to 25, 1914, on regulation of cotton exchanges, pp. 110, 190–272, 281.
[8] Ibid., pp. 283–299.
[9] Report of the Commissioner of Corporations on Cotton Exchanges, 1908–9.
[10] 35 Stat., 256, 257; Hearings before the House Committee on Agriculture on regulation of cotton exchanges, 63d Cong., 2d sess., Apr. 22 to 25, 1914, pp. 299–319.

particular fields of commercial endeavor, when they sell cotton goods for forward delivery, in advance of having them in hand or even manufactured. These consist of safeguarding every sale by a purchase on a future exchange, for delivery in a month approximating the date when needed, of an equivalent quantity of the raw material involved, or vice versa. Purely speculative transactions, because of the permanent conflict of interests between speculators, tend to stabilize prices, and are helpful rather than injurious. Whenever variations on an exchange in the prices of the commodity dealt in do not reflect changes in actual commercial values, the institution has ceased to perform the true economic functions for which it was organized. To the extent that an exchange is not a substantially correct barometer of genuine market values, there is something wrong. The degree in which quotations fail to express the normal operation of the laws of trade is the measure of the evils practiced. The bad features of exchanges are excrescences, largely the creation of artificial manipulation. These can be eliminated without unfairness to, or interference with, legitimate business. The methods of the exchanges in this country have been harmful, and have resulted in injustice, particularly to farmers.

Specifically, the committee found that the abuses on future exchanges arose from, or consisted of, five conditions: (1) Multiplicity of standards of classification used in the conduct of the cotton business in various parts of the country; (2) a system of so-called fixed differences between values of grades used in the settlement of exchange contracts; (3) the delivery upon exchange contracts of low-grade or inferior cotton, which the majority of spinners could not use in their factories; (4) the failure of tenders of cotton on exchange contracts to show the grades to be delivered; (5) the so-called pro forma delivery practice, under which long periods of time often elapsed before the person obligated by an exchange contract to receive cotton was informed of the grades, although he had been forced through the exchange rules to pay for it at the time fixed for delivery by the opposing party to the contract.

The Cotton Futures Act represents the attempt of Congress to remedy these faults, without embarrassing the performance of the useful economic functions, or burdening the members, of future exchanges. It is designed to go no further than is necessary in order to accomplish these ends.

The gist of the act is this: It imposes generally on all contracts of sale of cotton for future delivery, made at, on, or in any exchange, board of trade, or similar institution or place of business, a tax of 2 cents for each pound of cotton involved. It then exempts from the tax contracts that comply with either of two specified sets of conditions, which are aimed to correct the existing evils of future dealing. Lastly, it provides machinery for carrying the scheme into effect.[1]

The exemption conditions are contained in sections 5 and 10. Contracts made in compliance therewith are commonly called section 5, or "basis," contracts and section 10, or "specific," contracts. The provisions of either section may be incorporated into contracts by merely writing or printing on the ordinary signed brokers' slips, or other documents, of the form in customary use, the words "Subject to United States cotton futures Act, section 5," or "Subject to United States cotton futures Act, section 10." When the statute has been obeyed in this regard, the contracts are freed from taxation. Congress did not prescribe anything in respect to their performance. A member of an exchange who breaks a contract, made in conformity with section 5 or section 10, is as free from taxation, or the penalties of the act, as is a member who fulfills one. Congress doubtless took notice of the universal custom that brokers who do not comply with the rules, and meet their obligations, can not remain members of exchanges. As an inducement to parties to carry out contracts, the law on its face relies exclusively upon conflicting motives, of the one person to escape, and of the other to exact, payment of damages for breaches. It leaves contractors of this class to the same remedies of amicable adjustment, or

[1] See Journal of Political Economy, No. 5, May, 1915, Vol. XXIII, pp. 465–489.

of resort to the courts for the determination of controversies, that are open to everybody in the ordinary transactions of life. It requires only that the contracts themselves shall be of prescribed form in order to be entitled to exemption from taxation. In this sense the statute is self-executing.

The terms of exempt contracts are designed to bring about economic results Congress deemed desirable. If contracts in other form be used, they are unenforceable in Federal courts unless the taxes are paid. Otherwise, there is nothing to deter one from trading in nonexempt contracts. Furthermore, the duties imposed and the penalties for violation of the statute itself, in actual operation, apply only to members of exchanges. A non-member may deal freely, through his broker, on an exchange without apprehension of incurring, for the conduct of the broker, any other than ordinary civil liability. That liability is determined, just as previous to the passage of the act, by the general rules of law governing the responsibility of an undisclosed principal for the acts of his agent.

The essentials of a section 5 contract are that it be evidenced by writing, signed by the party to be charged or his agent, setting forth the terms of the contract; and that it provide for the use of grades of the official cotton standards of the United States promulgated by the Secretary of Agriculture, for the use of actual commercial differences in the values of the respective grades in the settlement of the contract, for the exclusion from delivery of certain low grade and inferior kinds of cotton, for the tender of the full number of bales involved, for advance written notice of the date of delivery of the cotton, for a written notice or certificate, on or prior to delivery, identifying each bale with its grade, and for the reference to the Secretary of Agriculture, upon the election of either of the parties, of disputes between them as to the quality, or the grade, or the length of staple of any cotton tendered under the contract.

The essentials of a section 10 contract are, that it specify the grade, type, sample, or description of the cotton involved, and certain other material terms; and that it provide that cotton of the kind specified, and no other, shall be delivered under the contract, and that delivery thereunder shall not be effected by means of "set-off" or "ring" settlement.

Under a section 5 contract,cotton of any deliverable grade may be delivered in fulfillment of the obligation assumed thereby, at the option of the deliverer. It is manifest that under such a contract no purchaser can be sure of getting cotton of any particular grade, quality, or length of staple. In order to enable purchasers to get exactly what they desire, and further to permit transactions in certain kinds of cotton not permitted to be delivered on section 5 contracts, section 10, concerned only with contracts requiring delivery of the identical kind of cotton bargained for, was incorporated in the act. Section 5 covers the usual and ordinary form of transactions on the exchanges; contracts under that section also raise the same questions as section 10 pertaining to the legal phases of the statute. In consequence, section 5 contracts only will be considered in detail.

Lack of uniformity in standards of grades, quality, and length of staple, was the mother of price depression, and contributed largely to creating the opportunity for manipulation, in the cotton business. "Middling" meant one thing in one market, and a wholly different thing in another market. A producer sold under the terminology of "middling." The purchaser from that producer sold the same cotton as of another grade. In spot transactions the trade relied on the prices prevailing on future exchanges. The exchanges dealt in depressed grades, and varied the application of these to suit their own interests and convenience. It is obvious that, so long as such practices continued, the quotations were not a true index of value. As a condition precedent to the operation of the act, therefore, section 9 empowered the Secretary of Agriculture to fix, and promulgate, standards of cotton classification and to issue practical forms of these for the use of the public. Section 5 limits trading on exchanges in contracts which it exempts from taxation to cotton of the official grades.

The exchange contract customarily in use before the act was passed did not permit a party to require the delivery of any particular grade. The party obligated to deliver was entitled to tender cotton of any grade recognized by the rules of the exchange. Contracts specifying middling, as the basis of the agreed price, ordinarily resulted, and might always result, in money adjustments being necessary. If the scale for adjustments had been in exact conformity with the differences in value of spot cotton of the grade contracted for, and of the grade or grades of which symbolic or actual delivery was made, no injustice or economic evil could have occurred. Instead, however, under the old practice, the differences were fixed by arbitrary rulings of exchange committees, which members were compelled to accept. This was the so-called "fixed difference" system. The result was that the prices on exchanges, upon which the public relied, and upon which they must rely if exchanges are to perform the purposes for which they are organized, not merely did not reflect actual values, but were subject to the widest possibilities of manipulation.

The statute meets this situation by requiring differences arising out of section 5 contracts to be settled so as actually to accord with the differences in the values of spot cotton, ascertained in a way prescribed by the act itself.

The plan for effecting this is simple. In the first place, the Secretary of Agriculture is required to investigate the markets of the United States and to announce publicly which are spot markets within the meaning of the act. Only the markets which he thus declares to be such are spot markets for the purposes of the act. He is directed to designate as spot markets only those "markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established" by him, with a proviso that in the absence of a sufficient number of markets meeting these conditions to conform to the requirements of the act, he shall make regulations for the determination of commercial differences.[1] If a future exchange be located in a place which is a spot market, then in the settlement of section 5 contracts the differences used must be ascertained from spot sales in that market. On the other hand, if the future market be located in a place which is not a spot market, the differences must be arrived at by taking the averages of the differences, in a certain number of spot markets, in the values of the grades ascertained from spot sales therein on a uniform date. The act directs the Secretary to designate not less than five markets for the latter purpose and requires the exchanges in places not themselves designated as spot markets to use the same set of commercial differences. As matter of fact, 10 such spot markets have been designated. The Secretary may change these from time to time, if, upon investigation, he finds it necessary in order to carry out the purposes of the act.

The eligibility to delivery, in fulfillment of basis contracts, of low grade and inferior cotton necessarily depressed prices on the exchanges. A seller was always entitled to deliver actual cotton. The purchaser was bound to accept any cotton tenderable under the rules, and, what was of itself equally objectionable, indeed made the situation economically intolerable, to adjust the differences, arising out of the variation of the grades delivered from the grade specified as the basis of the contract price, in accordance with the scale prescribed for the purpose by the exchange committee. From this no exchange member had any recourse. In consequence, at any time he might be compelled to accept "dog tails," which he could not sell to a spinner. Manifestly this gave to "dog tails" an undue influence, in some respects almost a dominating influence, upon the prices a broker was willing to bid.

As a step toward meeting,and a partial remedy for, this condition, section 5 requires the basis contract to contain a clause prohibiting from delivery low grade and inferior

[1] Secs. 7 and 8.

cotton, described as that which, "because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, or cotton that is below the grade of Good Ordinary, or, if tinged, cotton that is below the grade of Low Middling, or, if stained, cotton that is below the grade of Middling, the grades mentioned being of the official cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple or of immature staple, or cotton that is 'gin cut' or reginned, or cotton that is 'repacked' or 'false packed' or 'mixed packed' or 'water packed.'"

The consequence of the exchanges permitting simulated or paper tenders to be made, without description or identification of the cotton proposed to be delivered, was, inevitably, that the members were left in uncertainty as to where they stood with reference to their contracts. This deterring influence against fair prices is met by requiring section 5 contracts to provide, first, that on the fifth business day prior to delivery written notice of the date of delivery be given; second; "that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade." The differences used in the settlements must be ascertained, in the manner already described, from the values of spot cotton on the sixth business day prior to the date fixed for delivery; that is, on the business day immediately previous to the day of service of the delivery notice.[1] Thus, when a tender is made, every element of uncertainty governing the settlement is removed; the parties know both the grades represented by the tender and the commercial differences, in accordance with which they have agreed to settle.

The possibility, under the pro forma delivery practice, of there elapsing a long time, after payment for cotton contracted for, before the receiver learned what had been tendered, necessarily depressed prices. This is met by the requirements, already referred to, that the cotton tendered be adequately identified, and that the notice or certificate of identification be furnished to the receiver on or prior to the date fixed for delivery and in advance of final settlement of the contract.

Prior to the passage of the Cotton Futures Act there were considerable variations in the kinds of cotton tenderable on exchanges, and the decisions of the exchange officials as to whether the particular cotton tendered was deliverable were final and binding upon all members. To bring about uniformity in the application of Government standards, and to prevent exchanges by means of unappealable rulings from forcing their members to accept cotton of kinds which the statute prohibits from being delivered, section 5 requires contracts made under it to contain a stipulation that, in the event of controversy between the parties as to the grade, quality, or length of staple, of cotton tendered, either of them may refer the matter to the Secretary of Agriculture for determination.

The motives of this provision in section 5 contracts are, first, to afford to persons trading on official standards an ultimate recourse, to competent and disinterested authority, by which they may secure the kind of cotton to which they are entitled if they elect to demand actual delivery; second, to confine future dealings under basis contracts on all exchanges to identical kinds of articles.

The statute does not compel disputes to be referred. It only grants a privilege. If the grading and classification of cotton by exchange authorities were always correct, there would never be occasion to resort to the Secretary.

It was apparently believed by the framers of the act that the safeguards against unfairness which basis contracts must include would, of themselves, be a great, and perhaps ample, inducement to the exchanges to adopt them. But, in addition, there

[1] Sec. 6.

is imposed upon all basis dealings not conforming to section 5, a burden frankly intended to be sufficiently onerous to amount to a prohibition in all ordinary cases. This feature has led to discussion as to whether the statute is constitutional. There has also been discussion as to whether some of its subordinate, administrative provisions are valid.

The subject matter of the tax is the privilege of doing business on exchanges. Not only is there no tax on cotton itself, but the act expressly declares that it "shall not be construed to impose a tax on any sale of spot cotton." [1] The measure of the amount of the tax is the number of pounds of cotton involved in each transaction.[2] This is a mere contrivance for making rates uniform; the tax is, nevertheless, an excise. In consequence, the statute is not in violation of Article I, section 9, clause 4, of the Constitution, requiring direct taxes to be apportioned according to population. This was expressly ruled by the Supreme Court in Nicol *v.* Ames,[3] wherein the court had before it a clause in the Spanish War Tax Act,[4] imposing an excise upon sales made on exchanges, in language substantially identical with that employed in the Cotton Futures Act.[5]

The general scheme of the Cotton Futures Act is an application of the supertax device, which is not new in congressional legislation. A notable previous illustration is the Oleomargarine Act of 1886,[6] as amended in 1902,[7] by which Congress laid a tax on an article at a rate which was prohibitive, and then imposed a lower rate on the same article if it complied with certain prescribed conditions. In McCray *v.* United States,[8] sustaining the oleomargarine statute, it was held that the court would not inquire into the reasonableness of the rates, or the reasons for the alleged discrimination therein; that Congress was the exclusive judge of the rates in every case and of the grounds of classification for the purposes of taxation, at least to the point of purely arbitrary distinction. The only possible difference in facts between that case and a case arising under the Cotton Futures Act would be that the latter, after laying a practically prohibitive rate of taxation, amounting to $10 a bale, on contracts not complying with either section 5 or section 10 of the act, instead of prescribing a lesser rate for, exempts from taxation altogether, contracts complying with either section. This, however, constitutes no difference in principle. If Congress can classify into two rates of $10 a bale and 1 cent a bale, clearly it may eliminate the 1 cent, taxing one transaction at $10 a bale, and exempting the other entirely.

In the next place, it has been suggested that the act is unconstitutional because it applies only to cotton exchanges, to a particular class of business upon those exchanges, and to a part only of that class of business. This is only another form of stating the point just considered. The power of Congress to classify for purposes of taxation has been too thoroughly established, by a long line of decisions of the Supreme Court, now to be subject to serious debate.[9]

Article I, section 8, clause 1, of the Constitution, vesting in Congress the power "to lay and collect taxes, duties, imposts, and excises," provides that "duties, imposts, and excises shall be uniform throughout the United States." It has been contended that the act violates this requirement, because the excise laid is unequal in its operation upon persons throughout the country. It would be sufficient answer to the reason

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[1] Sec. 10.
[2] Sec. 3.
[3] 173 U. S., 509.
[4] 30 Stat., 448, 458, Schedule A.
[5] Sec. 3.
[6] 24 Stat., 209.
[7] 32 Stat., 193.
[8] 195 U. S., 27.
[9] Nicol *v.* Ames, 173 U. S., 509, 516, 523; Knowlton *v.* Moore, 178 U. S., 41; Treat *v.* White, 181 U. S., 264, 269; McCray *v.* United States, 195 U. S., 27; Flint *v.* Stone Tracy Co., 220 U. S., 107, 173; United States *v.* Billings, 232 U. S., 261.

assigned to say, as already shown, that Congress has power to tax the privilege of doing business on cotton exchanges, and, in accordance with its reasonable judgment, to subdivide the types of transactions on the exchanges, and tax one and exempt the other. But, in fact, the clause of the Constitution relied upon refers only to geographical uniformity.[1] The statute manifestly affects the subject matter with which it deals in the same manner, wherever found, in every part of the United States.

Again, it has been suggested that in the Cotton Futures Act Congress has attempted to delegate legislative power to executive officials, in violation of Article I, section 1, of the Constitution. The only officials upon whom the statute confers powers are the Secretary of the Treasury and the Secretary of Agriculture. The Secretary of the Treasury is authorized to prescribe rules and regulations for the collection of the tax, for affixing to contracts, and canceling, tax stamps, for the keeping of books and records by persons doing business under the act, and otherwise for the collection of the tax and the carrying out of the requirements of the act. The Secretary of Agriculture is authorized to prescribe standards for the official cotton classification to be used in carrying out the purposes of the act, to hear disputes between persons entering into contracts under section 5 of the act, on the basis of these standards, as to the grade, quality, or length of staple of cotton, to make rules and regulations governing the procedure in hearing and determining disputes referred to him, to designate spot markets, and to prescribe which of the spot markets shall be used by exchanges in places which are not spot markets for the determination of commercial differences between the values of different kinds of cotton in the settlement of section 5 contracts. All of these are mere details for carrying out the purposes of the act, of a character which the Supreme Court, over and over again, has held Congress may leave, and which indeed it would be impracticable not to leave, to executive officers.[2]

To meet the great evils arising from lack of uniformity in standards in use throughout the United States, Congress conferred on the Secretary of Agriculture authority to establish and promulgate standards by which the quality or value of cotton "may be judged or determined, including its grade, length of staple, strength of staple, color, and such other qualities, properties, and conditions as may be standardized in practical form."[3] If necessary in order to sustain this provision, it is at least arguable that it may be based on Article I, section 8, clause 5, of the Constitution, which empowers Congress to "fix the standards of weights and measures." But, inasmuch as the establishment of standards is only incidental, and is merely for the purpose of carrying out other portions of the act, the authority granted comes well within the type of powers which Congress, without violating the prohibition against delegating them, may confer on executive officials.[4]

When the Secretary of Agriculture determines a controversy, he does not act as a mere umpire; his decisions, while not legally conclusive, for practical purposes are more effective than awards of arbitrators. Great value is imparted to his findings by a clause in the act requiring that, when made after opportunity to both sides for a hearing, they shall "be accepted in the courts of the United States in all suits between such parties or their privies as prima facie evidence of the true quality, or grade, or length of staple, of the cotton involved."[5] This provision was an exercise by Congress of a long recognized legislative power to prescribe the prima facie effect of

[1] Nicol *v.* Ames, 173 U. S., 509, 522; Knowlton *v.* Moore, 178 U. S., 41; U. S. *v.* Delaware & Hudson Co., 213 U. S., 366; Flint *v.* Stone Tracy Co., 220 U.S., 107, 174; see also Bell's Gap Railroad Co. *v.* Pennsylvania, 134 U. S., 232, 237; Budd *v.* New York, 143 U. S., 517; Southwestern Oil Co. *v.* Texas, 217 U. S., 114; German Alliance Insurance Co. *v.* Kansas 233 U. S., 389.

[2] Field *v.* Clark, 143 U. S., 649; Buttfield *v.* Stranahan, 192 U. S., 470; Union Bridge Co. *v.* U. S., 204 U. S., 364; St. Louis, I. M. & S. Ry. *v.* Taylor, 210 U. S., 281, 287; Monongahela Bridge Co. *v.* U. S., 216 U. S., 177; U. S. *v.* Grimaud, 220 U. S., 506, 516; I. C. C. *v.* Goodrich Transit Co., 224 U. S., 194, 214.

[3] Sec. 9.

[4] Buttfield *v.* Stranahan, 192 U. S., 470; St. Louis, I. M. & S. Ry. *v.* Taylor, 210 U. S., 281.

[5] Sec. 5.

evidence, and in no sense deprives of the right of trial by jury.[1] In Meeker *v.* Lehigh Valley Railroad Co.[2] a similar clause of the Interstate Commerce Act, of identical purport, was expressly held to be valid.

Section 15 prescribes as a penalty for a violation of the act a fine of from $100 to $20,000, and in the case of natural persons an additional punishment, at the discretion of the court, of imprisonment of from 60 days to 3 years. Section 16 prescribes a civil penalty of $2,000 for each violation, recoverable by the United States, one-half of which is to go to the informer.

It has been argued, on the authority of Ex parte Young,[3] that these penalties are so severe as to invalidate the statute, because they deprive the persons subject to them of the "due process of law" guaranteed by the fifth amendment to the Constitution. But an examination of the case will show that it recognizes that a statute, such as the Cotton Futures Act, by its own express terms dealing fully with a matter over which the jurisdiction of the legislature is complete, is not within the rule, there applied, against overburdensome and confiscatory penalties, which one is forced, at his peril, to determine whether he is subject to, from facts not appearing on the face of the law. In addition, if one be deprived of property through the exercise by Congress of an enumerated power, he can not complain, because what occurs is the result of due process.[4] Furthermore, even if the penalty clauses of the Cotton Futures Act were invalid, in whole or in part, they are entirely separable from, and would not impair the constitutionality of, its other portions.[5]

If Congress had dealt exclusively with domestic exchanges and had left it open to dealers in the United States to transact their futures business on foreign exchanges without either paying a tax, or complying with any of the conditions upon which exemptions are granted by sections 5 and 10, the whole statute might easily have been evaded. Moreover, great injustice would have been done to the exchanges in this country. Restrictions would have been imposed upon our own citizens dealing in American cotton which, if not complied with, would have had the effect of transferring to foreign exchanges much of the business in cotton futures naturally belonging to American exchanges. This was a consequence which a representative of the New York Exchange urged the House Committee on Agriculture to prevent.[6] To meet these difficulties, section 11 imposes "upon each order transmitted, or directed or authorized to be transmitted, by any person within the United States for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country," an excise at the same rate as that imposed on domestic transactions, with an exemption, however, if the contract comply with all the provisions of section 5, except the one relating to the reference of disputes to the Secretary of Agriculture, or with all the conditions specified in section 10. It has been argued that this provision is in conflict with Article I, section 9, clause 5, of the Constitution, which prohibits the laying of a tax or duty on "articles exported from any State." The suggestion is without merit, however, because no tax or duty is laid on any cotton or other "article," much less on any that is "exported";[7] a mere excise is imposed upon the privilege of transmitting orders abroad for execution.[8]

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[1] Adams *v.* New York, 192 U. S., 585, 599; Mobile etc. Ry. Co. *v.* Turnipseed, 219 U. S., 35, 42.

[2] 236 U. S., 431.

[3] 209 U. S., 123.

[4] Union Bridge Co. *v.* U. S., 204 U. S., 364; Monongahela Bridge Co. *v.* U. S., 216 U. S., 177; Hannibal Bridge Co. *v.* U. S., 221 U. S., 194, 205.

[5] U. S. *v.* Delaware & Hudson Co., 213 U. S., 366, 417; Southwestern Oil Co. *v.* Texas, 217 U. S., 114, 120; Flint *v.* Stone Tracy Co., 220 U. S., 108, 177.

[6] Hearings, Apr. 22 to 25, 1914, on regulation of cotton exchanges, pp. 192 to 195.

[7] Ware & Leland *v.* Mobile County, 209 U. S., 405; Brodnax *v.* Missouri, 219 U. S., 285.

[8] Nicol *v.* Ames, 173 U. S., 509; Fairbank *v.* U. S., 181 U. S., 283, 293; Thomas *v.* U. S., 192 U. S., 363, 371.

In Ware & Leland *v.* Mobile County, *supra*, the court held that the carrying out of the alleged contract of sale for future delivery did not at any time involve interstate commerce, because the contract, originating as it did in one State and stipulating for delivery in another State, although consummated by actual delivery in the latter State, did not by its terms require that the commodity sold should be actually transported from State to State. However, the current rules of foreign exchanges might be altered; a party transmitting an order might frame the terms of the order in such a way that performance of his contract would necessitate the exportation of specific cotton from the United States to the foreign place of delivery. The presence of such stipulation in a contract, followed by the actual exportation of the cotton, might render the Ware & Leland case inapplicable. In that event, other decisions of the Supreme Court fully sustain the power of Congress to tax, as it has done in section 11, each order transmitted.

In Nicol *v.* Ames, *supra*, the court was dealing with an act of Congress that laid a graduated stamp tax on every sale or agreement to sell made on an exchange, either for present or for future delivery. It was held that this was not laid on the property, or on the sale thereof, but was laid on the privileges or facilities employed in making the sale; privileges and facilities which are separate and apart from the property sold or the business of selling the property.

This case clearly establishes the rule that Congress, in the exercise of its enumerated power to lay an excise, may constitutionally tax the use of a part of the existing privileges and facilities employed in carrying on the country's export trade, and that the whole of the extraordinary privileges and facilities for making sales on or through an exchange is a proper subject for an excise tax.

In Fairbank *v.* United States, *supra*, the Government insisted that this partial power of Congress, as declared in Nicol *v.* Ames, to reach, by way of an excise tax, some of the existing privileges and facilities used in carrying on foreign commerce without offending the export clause of the Constitution was sufficient to include a tax laid on foreign bills of lading. The court held that a bill of lading was, commercially, an essential part or feature of every sale which involved shipment abroad, and that, in legal contemplation, a tax thereon was tantamount to a tax on exports. Nevertheless, in a most convincing manner, the court, in its reasoning, restated and unconditionally reasserted the rule of law laid down in Nicol *v.* Ames.

The excise tax laid by section 11 is vastly more restricted in its nature and scope than the tax involved in the Nicol *v.* Ames decision. In the latter, the excise operated on all of the machinery of merchandise sold or offered for sale on an exchange; while the excise laid by section 11 only strikes at orders transmitted for making contracts for the future delivery of cotton at, on, or in, a foreign exchange when, and only when, such orders are not for the making of contracts in compliance with the provisions of section 5 or section 10. When it is remembered that sections 5 and 10 offer abundant untaxed exchange facilities for the legitimate sale and export of cotton, it is obvious that the excise tax laid by section 11 only upon demonstrated unfair methods which were being employed by the exchanges for carrying on the country's foreign commerce in cotton, it becomes manifest that the cotton excise tax is entirely within the letter and spirit of the rule so clearly declared in Nicol *v.* Ames.

The exportation of actual cotton is not indispensable to carrying on dealings in cotton futures on foreign exchanges. In every case in which it has been held that the tax on an instrumentality of foreign commerce, such as a bill of lading,[1] marine insurance policy,[2] charter party,[3] or ship's manifest,[4] was tantamount to a tax on the commodity exported, the instrumentality was a necessary means of effecting

[1] Almy *v.* California, 24 How. (U. S.), 169; Fairbank *v.* U. S., 181 U. S., 283.
[2] Thames & Mersey Ins. Co. (Ltd.) *v.* U. S., 237 U. S., 19.
[3] U. S. *v.* Hvoslef, 237 U. S., 1.
[4] N. Y. & Cuba &c. Co. *v.* U. S., 125 Fed., 320; reversed on another point, 200 U. S., 488.

exportation, and the commodity could not have been exported without payment of the tax. Section 11 leaves the exportation of actual cotton free and unhampered, and does not tax any part of the facilities without which exportation in ordinary course could not occur.

Lastly, it has been suggested that the Cotton Futures Bill, which resulted in the statute approved August 18, 1914, originated in the Senate, and, consequently, contravenes the requirement of Article I, section 7, clause 1, of the Constitution, that "all bills for raising revenue shall originate in the House of Representatives." The facts are, that Mr. Smith, of South Carolina, introduced in the Senate a bill, referred to by the calendar number "S. 110," entitled, "A bill to regulate trading in cotton futures and provide for the standardization of 'upland' and 'gulf' cottons separately," framed, primarily, under the post-office and post-roads clause, and, incidentally, under the commerce clause, of the Constitution.[1] Mr. Lever, of South Carolina, introduced in the House a bill, designated as "H. R. 15318," (reintroduced as "H. R. 16643"), entitled, "A bill to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes," based exclusively on the tax clause of the Constitution, and embodying some economic ideas similar to those embraced in Mr. Smith's bill.[2] The Smith bill passed the Senate,[3] and, when it reached the House, was referred to the Committee on Agriculture.[4] When the House Committee made its report, it struck out the entire bill as passed by the Senate, including even the title, and retained only the enacting clause and the designation "S. 110." [5] The bill as reported by the committee to the House, under the number S. 110, was really the original Lever bill, with amendments. The bill as reported back to the House passed,[6] and, when it reached the Senate, was sent to conference.[7] The conference committee made further amendments,[8] and the bill that had passed the House, as amended in conference, was enacted by both Houses.[9] The Smith bill did not propose the raising of revenue. The bill finally enacted, which does provide for "raising revenue," manifestly originated in the House. In consequence, there is no basis of fact upon which to predicate the contention that the statute was enacted in violation of the rule of procedure prescribed by the Constitution for revenue bills.

The Supreme Court has refused to go behind the face of legislation to sustain an attack on a Federal statute, based on a charge that the formalities prescribed for proceedings in Congress had not been followed.[10] But the converse has never happened. Where the official legislative records show an act to have been passed in compliance with every requirement of the Constitution of the United States, it is inconceivable that the court would shut its eyes to the truth; would debar itself from information of which it may take judicial notice.[11] To adjudge a statute invalid upon the sole ground that it bore a prima facie indication that the bill from which it resulted originated in one House rather than in the other, would, at the best, be the substitution of mere form for substance. So to hold would be a departure from the Supreme Court's persistent course in the past of declining to undertake to regulate the methods by which Congress does its business,[12] would violate the presumption of

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[1] Congressional Record, vol. 50, pt. 1, p. 53.
[2] Ibid., vol. 51, pt. 6, p. 6177.
[3] Ibid., vol. 51, pt. 6, pp. 5592 and 5649.
[4] Ibid., vol. 51, pt. 6, p. 6135.
[5] House Report No. 765, 2d sess., 63d Cong.
[6] Congressional Record, vol. 51, pt. 11, pp. 11313–11322.
[7] Ibid., p. 11351.
[8] Conference Report No. 1012; S. Doc. No. 557.
[9] Congressional Record, vol. 51, pt. 13, pp. 12840–12852; pt. 14, p. 13661.
[10] Field *v.* Clark, 143 U. S., 649, 671; U. S. *v.* Ballin, 144 U. S., 1; see also Harwood *v.* Wentworth, 162 U. S., 507.
[11] See Gardner *v.* Barney, 6 Wall., 499; In re Duncan, 139 U. S., 449, 457–458.
[12] U. S. *v.* Ballin, 144 U. S., 1.

regularity of official action,[1] would be a repudiation of the settled doctrines that every presumption in favor of the validity of a statute will be indulged,[2] and that a statute will be declared unconstitutional only when the judicial duty to do so is imperative.[3]

Doubtless experience will demonstrate that this statute ought to be altered in some respects. But a dispassionate examination of the law itself, and of the legistative history of the bill which finally became law, as well as of its predecessors back to 1884, can hardly fail to create three impressions: First, Congress has made an honest effort to do justice to all; second, if the evils at which the statute is aimed persist, and can not be eliminated by amendment, eventually the business of dealing in cotton futures will have to be carried on otherwise than upon exchanges; third, in its present temper Congress is determined to exercise its undoubted power to destroy the exchanges rather than to see its deliberately expressed judgment thwarted by subterfuge or evasion.

The act went into full effect February 18, 1915, six months after its passage. It has, therefore, been in operation less than half a year. This is too short a period to afford sufficient basis for final conclusions as to its merits. So far, it has given widespread satisfaction and has been little opposed. Its acceptability to the trade is, in part, evidenced by the circumstance that the official cotton standards promulgated under it, instead of being confined to future exchanges, have been voluntarily adopted by many spot markets. Without additional legislation, it is not unlikely that, as a mere matter of convenience and commercial advantage, these standards would soon come into general use in this country and eventually be accepted abroad as the basis of dealing in American cotton. There is strong probability, however, that Congress will give further consideration to a measure, known as the cotton standards bill,[4] favorably reported by the House Committee on Agriculture last year,[5] or to some similar bill, in substance, requiring cotton shipped in interstate and foreign commerce to comply with standards established by the Secretary of Agriculture. If there were legislation along that line, it would supplement and greatly strengthen the Cotton Futures Act. The two together would go far toward compelling uniformity in the standards of American cotton dealt in everywhere, both in the United States and in other countries.

As a part of its educational policy during the early history of its administration of the statute, the Department of Agriculture has been extremely liberal in exercising its jurisdiction of controversies between parties to future contracts, and, when both sides consented, has decided a good many not technically referable. Nevertheless, up to June 30, 1915, only 703 disputes, involving a little under 45,000 bales of cotton, had been referred to the Secretary, all of which came from one exchange. Even so small a number as this would doubtless have been less if that exchange had been willing to frame its rules so as to give the force it might to the work of its own grading and classification machinery. Its failure in that respect has been only a self-imposed inconvenience, which will probably be corrected in the course of time, as its members more generally understand the provisions of the act and more fully appreciate that the reference of disputes to the Secretary of Agriculture is a mere ultimate recourse, to be availed of as a privilege, and is not compulsory.

Violent attacks have been made during the last few years on the doctrine of stare decisis. A great deal has been said, much truthfully, about judges insisting on following lines of decisions to which they are accustomed, even though clear departures from sound first principles and conceded to be aids in the accomplishment of injustice. However great the judicial sin in this regard, practicing lawyers realize that there is a

[1] Lyons *v.* Woods, 153 U. S., 649.

[2] U. S. *v.* Gettysburg Elec. Ry. Co., 160 U. S., 668, 680; Nicol *v.* Amos, 173 U. S., 509, 514; Buttfield *v.* Stranahan, 192 U. S., 470, 492.

[3] Trade Mark Cases, 100 U. S., 82, 96.

[4] H. R. 18492.

[5] H. Rept. No. 1120, 63d Cong., 2d sess.

considerable proportion of business men who adhere even more slavishly to precedents. This type habitually complains of change. Though relatively few, the principal critics of the Cotton Futures Act belong to that class and illustrate that tendency. As a matter of fact, interference with the ordinary course of the affairs of exchanges is reduced by the act to the minimum found by Congress, after investigation and debate running over nearly a third of a century, to be essential to correct clearly disclosed abuses, admitted, with substantial unanimity, by the exchanges themselves. If legitimate business were never interfered with any more seriously than the cotton trade is hampered by the Cotton Futures Act, then indeed would business be free and without cause of complaint.

Injustice is always a grave matter. When clearly discerned, persistence in it is criminal. When proven, if no remedy be proposed, it engenders radicalism, from which extreme consequences are apt to follow. The wrongs to the producer of cotton, as well as to the manufacturer and to the consumer of cotton goods, resulting from the methods of conducting dealings in cotton futures, long prior to the Sixty-third Congress, had become so manifest to every exchange that candor and the uncontroverted evidence, alike, compelled admission of their existence. The inability of the farmer, with exactness, to specify the means employed to deprive him of the fair economic share of the fruits of his toil afforded no satisfaction to the intelligent, thoughtful cotton exchange broker. What should be done was of concern to everyone; it was not a class or sectional issue.

The intervention of Government agency should have been, and has been, welcomed. Honest and patriotic members of exchanges cheerfully accepted release from shackles which tradition had imposed, and which they themselves had not had sufficient initiative to break. They were glad to escape from the pressure of the possibilities of unfair competition. In the past, these had induced them to participate in a system which was indefensible. They are gratified to be freed from the odium heaped upon them, always with a measure of propriety, frequently unduly, by those whose respect and good will they preferred to enjoy. They recognize that shafts hurled at them, though often misshapen and poorly aimed, nevertheless bore points forged in truth.

The United States Cotton Futures Act is an attempt to eradicate injustice. It is framed in the interest of all; producers, spinners, exchanges, and the country. It seeks to revive genuine, unfettered competition; to give a free market place to the makers, and to the users, of a great American crop. Even though it should prove defective in some of its details, because of its motive it will be a benefaction, both to the exchanges and to the public.

NOTE.—Bills introduced in Congress dealing with regulation of cotton futures were as follows: 48th Cong., 1st sess., H. R. 5007; 50th Cong., 1st sess., H. R. 5689, H. R. 7051; 51st Cong., 1st sess., H. R. 5352; 52d Cong., 1st sess., S. 865, S. 1268, S. 1757, H. R. 394, H. R. 479, H. R. 2699, H. R. 3870, H. R. 6012, H. R. 7845, H. R. 8951; 53d Cong., 2d sess., S. 1167, S. 1537, S. 2277, H. R. 5653, H. R. 7007; 54th Cong., 1st sess., S. 244, H. R. 1993; 55th Cong., 1st sess., H. R. 3712; 55th Cong., 2d sess., H. R. 5429, H. R. 6355, H. R. 6701, H. R. 10429; 56th Cong., 1st sess., S. 1972, H. R. 100, H. R. 2566; 57th Cong., 1st sess., H. R. 14647; 58th Cong., 2d sess., H. R. 15542; 58th Cong., 3d sess., S. 7201; 59th Cong., 1st sess., S. 2776, H. R. 8437, H. R. 19270, H. R. 20208; 59th Cong., 2d sess., S. 7988, H. R. 20554, H. R. 23208, H. R. 24659; 60th Cong., 1st sess., S. 484, H. R. 67, H. R. 189, H. R. 3943, H. R. 7546, H. R. 9199, H. R. 10474, H. R. 11785, H. R. 11839, H. R. 21588, H. R. 21990; 60th Cong., 2d sess., S. 7370, H. R. 22338, H. R. 24134, H. R. 28301; 61st Cong., 1st sess., H. R. 3041, H. R. 5887, H. R. 7521; 61st Cong., 2d sess., S. 7983, H. R. 15426, H. R. 18173, H. R. 16030, H. R. 21483, H. R. 21585, H. R. 23761, H. R. 24073, H. R. 24601; 61st Cong., 3d sess., H. R. 29712, H. R. 31861, H. R. 31863, H. R. 32472; 62d Cong., 1st sess., H. R. 11, H. R. 56, H. R. 1324, H. R. 1631, H. R. 12220; 62d Cong., 2d sess., S. 4654, S. 4979, H. R. 14681, H. R. 18323, H. R. 18489, H. R. 18587, H. R. 18595, H. R. 18650, H. R. 18778, H. R. 18779, H. R. 18785, H. R. 18786, H. R. 18790, H. R. 18795, H. R. 18838, H. R. 18839, H. R. 18853, H. R. 18860, H. R. 19124, H. R. 19130, H. R. 19799, H. R. 19809, H. R. 20836; 63d Cong., Senate special session, S. 110; 63d Cong., 1st sess., Senate amendment No. 609 to H. R. 3321, H. R. 3338, H. R. 3339, H. R. 4300, H. R. 6379, H. R. 7516, H. R. 7622, H. R. 8192, H. R. 8602, H. R. 8642; 63d Cong., 2d sess., H. R. 9676, H. R. 9681, H. R. 9682, H. R. 10948, H. R. 14157, H. R. 14947, H. R. 15318, H. R. 16643, H. R. 16897, H. R. 16900; total, 120.

OPINIONS OF GENERAL INTEREST REGARDING QUESTIONS ARISING UNDER THE UNITED STATES COTTON FUTURES ACT.

AUTHORITY OF THE DEPARTMENT OF AGRICULTURE UNDER THE UNITED STATES COTTON FUTURES ACT.

2. **No authority to assume liability for cotton unfit for delivery.**

DEAR SIR: Your letter of May 1, 1915, concerning the tender of cotton in settlement of future contracts in New York has received careful consideration. It is noted that your cotton has been rigidly graded by the classification committee of the New York Cotton Exchange, that you have tendered it to Messrs. ——— against May notices which they hold, and that you think that Messrs. ——— will dispute every bale of your tender and refer the matter to the Secretary of Agriculture for determination.

Permit me to state that under the Cotton Futures Act either the receiver or deliverer of cotton on a future contract is given the right to refer any dispute as to the grade, length of staple, or quality of any cotton tendered to the Secretary of Agriculture for determination. Without doubt Messrs. ——— are within their right in disputing your tender if they believe the cotton tendered by you is not up to contract specifications. However, it by no means follows that their judgment of cotton will be superior to that of the classification committee of the New York Cotton Exchange. Of course it will take a thorough examination of the cotton by the department before I can venture an opinion as to its tenderability, but as it passed inspection in New York it is not unlikely that in case of dispute your certificate of grade may be upheld by this department.

I note also that some of your cotton was rejected by the classification committee as being less than seven-eighth inch in staple. Permit me to point out that under the Cotton Futures Act such rejection is not finally binding on you, and if you consider that any cotton rejected for this cause is not actually less than seven-eighth inch in staple you can tender such cotton on your own certificate of grade.

In regard to your suggestion that the Government assume liability for cotton which this department may find to be of a kind that is unfit for delivery on contract, you are advised that there is no authority in the law for the Government to incur any such liability or to pay any claims in connection therewith. In fact, this department does not certificate cotton, but passes merely on the question or questions in dispute as to the grade or quality or length of staple of cotton tendered in settlement of a future contract entered into in accordance with section 5 of the act.

I note the general spirit of your letter and fully appreciate all of your remarks. Of course the Cotton Futures Act was not passed to impose a hardship on anyone, but simply as a protection of the legitimate interests in the cotton trade. It seems that some people are under the impression that the seven-eighth inch requirement works a hardship on certain communities. From our investigations as to the length of staple of cotton throughout the South it is our firm conviction that only a very small percentage is under the seven-eighth inch requirement, possibly 3 to 5 per cent at the most. It seems only fair that this very small fraction of the South's great crop should not be collected at any future market and used as a lever to depress the prices of the whole crop. Especially would this seem expedient since good cotton of 1 inch staple can be grown in practically every community if a good variety of seed is planted.

The operation of the law thus far has justified the expectations of its framers and has maintained fair quotations for cotton. It is hoped that in the course of time, after the cotton trade has become accustomed to the new order of things, exchanges will work smoothly and fairly and that the trade in general will become adapted to the provisions of the act.

Very truly, yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MAY 8, 1915.

No authority or machinery for supervising or enforcing the fulfillment of section 5 contracts—Suggestions for cotton exchanges.

3.

GENTLEMEN: In further reply to your letter of March 22, receipt of which has been acknowledged:

It appears that you tendered to ——— and Company, on two future contracts made on the New York Cotton Exchange, subject to the United States Cotton Futures Act, section 5, certain cotton as classified by that exchange. ——— and Company have disputed the grade and length of staple of part of the cotton tendered, and have referred the disputes to the Secretary of Agriculture for determination. You desire to be advised whether, in case the Secretary of Agriculture finds that any of the cotton involved is of a grade or length of staple that is not tenderable under the provisions of section 5 of the act, which are made part of your contract, the Department of Agriculture will then determine the price equivalent for such cotton, or whether you will be obliged to take it back and substitute therefor other cotton that is tenderable.

The Secretary of Agriculture is only authorized by the statute to determine the facts as to the grade, or quality, or length of staple of cotton involved in a dispute referred to him under the United States Cotton Futures Act. In no case is he authorized to determine the price equivalent of any such cotton or the rights of either of the parties against the other under the contract between them. By reference to subdivision 7 of section 5 of the act, you will see that the jurisdiction of the Secretary in respect to disputes is limited in the ways here stated.

The method to be used in fulfilling or settling your contract obligations in the case you cite, whether by delivery of a like quantity of tenderable cotton to take the place of that previously tendered and found to be untenderable, or in some other manner, is a matter that must be determined by the parties themselves, either amicably, or by action in the courts. It depends, primarily, upon an interpretation of your contract and of the by-laws and rules of the exchange made a part thereof; or it may be determined by a supplemental agreement between the parties. In either case, the matter is not one which can be determined by this department, and, even with all the contract provisions before me, I would not feel warranted in expressing any opinion thereon.

In this connection, your attention is called to memoranda Nos. 6 and 7 in Service and Regulatory Announcements, No. 3, of this office, dated March 3, 1915. If the rules of the exchange now contain no provision for the adjustment of controversies of the kind here involved, and it is desired to amend them so as to meet such contingencies, it is suggested that care should be observed that they are made harmonious with, and do not defeat any provision of, the Cotton Futures Act. It is the view of this office, as you will see from the numbered memoranda referred to, that no exchange rule would be proper which undertook to make the decision of the exchange committee as to grade, quality, or length of staple final and conclusive upon the parties; that the statute requires that the contract preserve to both parties the absolute right to refer to the Secretary of Agriculture any dispute as to grade, quality, or length of staple; and that, inasmuch as a person making a tender can not lay the basis for his contention before the Secretary that the grade, quality, or length of staple is different from that certified by the exchange committee if the rules (made a part of his contract) should require him to accept as final and conclusive the decision of the committee, he must have, and neither the contract nor the rules can, without incurring the obligation to pay a tax, deprive him of, the right to tender cotton on his own certificate or notice of grade, quality, or length of staple. As pointed out in the letters referred to, however, this office is further of opinion that the exchange may, if it see fit, require the use of the exchange machinery for inspection and classification of the cotton before tender, and may require the exchange committee's certificates to accompany

the party's own certificate or notice when the tender is made, without thereby rendering the contract taxable.

As heretofore indicated, because of the limits placed by the statute on the powers of the Secretary of Agriculture, this department would not, in any event, express any opinion as to what are the rights of yourself and ——— and Company in the case you put. Nevertheless the department is firmly of opinion that the rules of the New York Cotton Exchange may be framed, if not already framed, in complete harmony with the law, so as adequately to define and enforce the rights of its members after disputes have been determined and so as to accord with the determination of the Secretary of Agriculture.

Very truly yours, CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 26, 1915.

4.

GENTLEMEN: In further reference to your letter of April 27:

Your statement of your experience in delivering cotton in March on a New York future contract has been noted. You also call attention to a news item emanating from New York to the effect that a large spot house in that city will not accept any May tenders on the basis of the classification of the classification committee of the New York Cotton Exchange, but will refer every bale to the Secretary of Agriculture for his determination, and ask whether there is not some way whereby cotton could be classed at the time of delivery rather than upon reference to the Secretary after delivery.

The United States Cotton Futures Act is essentially a tax measure applying to all contracts of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business, but incidentally it regulates such exchanges by providing in section 5 a form of contract which they are led to adopt by reason of its exemption from the tax imposed. For convenience contracts conforming to the provisions of section 5 of the act will be termed section 5 contracts.

Although the act prescribes a form of contract, conforming to section 5, that is adopted by the future exchanges by reason of its exemption from taxation thereunder, and accordingly fixes the contract rights and obligations of parties dealing in futures on such exchanges, yet it contains no provisions or machinery for supervising or enforcing the fulfillment of such contracts, except that the Secretary of Agriculture is authorized to determine disputed questions of fact referred to him by either or both parties as to the grade or quality or length of staple of any cotton tendered on the contract. The parties to such contracts are thus left to themselves to secure the enforcement of their contract rights and obligations either independently, in the same way that other contract rights and obligations are enforced, or with the assistance of the machinery of the exchange in which the parties are members.

If the parties faithfully endeavor to fulfill their obligations under their contract, and if the rules of the exchange are properly adapted to assist the parties in the fulfillment or settlement thereof, it is believed that the conduct of business under the act would operate smoothly and without hardship or undue delay to any one concerned. However, if either party attempts to obstruct or burden the making or taking of delivery under a section 5 contract, or the prompt settlement thereof, consequent hardship and delay will doubtless be suffered by the other party. This is a situation which the act does not assume to control but leaves to the parties themselves. It is believed that it can and should be controlled or remedied, in part at least, by the adoption and enforcement of proper disciplinary or other measures by the exchange.

Either party to a section 5 contract may, as a matter of right, in accordance with the seventh subdivision of section 5 and the regulations prescribed pursuant to the act, refer to the Secretary of Agriculture a bona fide dispute arising under a contract

between the parties thereto as to the grade, quality, or length of staple of any of the cotton tendered. It is the duty of the department to determine these disputes, although it may exercise the right to dismiss controversies which are not bona fide disputes. The department, however, has no authority under the act to determine the grade or quality or length of staple of cotton before the tender thereof on a section 5 contract. According to subdivision 7 of section 5 of the act, this determination is authorized only in case of dispute after tender of the cotton on the contract.

It is believed that the seller, under a section 5 contract, has the right to tender cotton on his own notice or certificate if he so choose. However, it is also the view of the department that the exchange may, in its rules, require all cotton to be inspected and classified by the exchange machinery before tender without impairing the right of the seller to tender on his own notice or certificate.

If the exchange committee classifies cotton competently, it seems very probable that, in general, its classification would be substantially upheld by the Secretary of Agriculture in a dispute referred to him regarding such cotton. Furthermore, the party referring a dispute would, under the practice of the department, have to bear the costs of its determination to the extent to which his claim as to the grade or quality or length of staple of the cotton is not sustained. Under these circumstances, in case the exchange has suitable machinery for classifying cotton which has the confidence of its members and requires all cotton to be classified by it before tender on a section 5 contract, it would seem that in the average case the deliverer would be willing to tender, and the receiver would be willing to accept, the cotton on the exchange classification and that the question of its grade or quality or length of staple would be referred to the Secretary of Agriculture only in occasional instances of grievance against the action of the exchange committee.

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MAY 7, 1915.

Possible extension of time for filing complaints—Suggestions for cotton exchanges. 5.

DEAR SIR: Your letter of April 1, 1915, is received.

It appears that on the last days of March ——— tendered to you 300 bales of cotton in fulfillment of three contracts made on the New York Cotton Exchange, subject to the United States Cotton Futures Act, section 5. You claim that the cotton so tendered is of such a character as not to be deliverable under section 5 of the act, and have referred the questions to the Secretary of Agriculture for determination. You point out the fact that you had no opportunity to examine the cotton before it was tendered to you, and that it required 72 hours for you to have it examined bale by bale and to prepare and serve the necessary papers before referring the disputes to the Secretary of Agriculture. You further state that you expect to receive tenders of from 10,000 to 20,000 bales of cotton on section 5 contracts on one or two days in May, and state that it will be impossible for you to examine each sample of the cotton and study its deficiencies within the time allowed after tender for referring disputes regarding such cotton to the Secretary of Agriculture. You ask my consideration of this question.

It is believed that as soon as the parties become familiar with the requirements of the regulations of the Secretary of Agriculture as to complaints and stipulations their mere preparation will require very little time. In this connection, your attention is called to suggested forms of complaint and stipulation in Service and Regulatory Announcement No. 4 of this office, which is now being printed and a copy of which will be sent to you at an early date.

The period of time allowed by section 2 of regulation 2 for filing a complaint or stipulation, namely, on or prior to the tenth day succeeding the day on which the person

making a tender gives to the person receiving the same written notice of the date of delivery of the cotton involved, was fixed to suit the average case and is believed to be sufficient for this purpose. In exceptional cases, when the time so allowed is not under all the circumstances sufficient to enable a party to refer his dispute to the Secretary of Agriculture, an extension of time for a reasonable period for referring the same may be applied for, in accordance with section 2 of regulation 2, and may be granted within the discretion of the Secretary. The department expects that every complaining party shall make a reasonable effort to refer any dispute he may have under the United States Cotton Futures Act to the Secretary of Agricluture within the time prescribed by the regulations. However, it is the purpose of the regulations to allow every party who has a bona fide dispute as to the grade or quality or length of staple of cotton tendered under a section 5 contract a fair and reasonable opportunity to refer the question or questions to the Secretary of Agriculture for determination. If any party finds that by the exercise of reasonable diligence he is unable to refer his dispute within the time regularly allowed, it would seem that he might, upon presentation of the facts, secure a suitable extension of time for the purpose. If you find that you are confronted with this situation in connection with the delivery of cotton to you on May contract, it is suggested that you file an application for an extension of time to a specified date, together with all the facts supporting such application, and at the same time serve a copy of same on the opposing party. The matter will then receive careful consideration.

You also point out that under section 5 contracts which you have entered into on the New York Cotton Exchange, you, as receiver, are placed at a great disadvantage in being required to pay at the time of tender for undeliverable cotton that is tendered to you, so that the tenderer has the use and control of your money until it is decided whether or not the cotton is of a deliverable grade or quality or length of staple. You state that, in your opinion, a party who tenders cotton not up to the grades allowed by section 5 is subject to the tax imposed by the act, and ask my consideration of this question.

It appears that the person making a tender under a contract, made subject to the United States Cotton Futures Act, section 5, has no right to tender or deliver cotton of any grade or quality or length of staple that is prohibited from being delivered by section 5 of the act. The person receiving a tender has a legal right to refuse to accept any such cotton, and has such remedies for breach of contract as the terms of his contract and the law may give him. However, if the contract be made in accordance with the provisions of section 5 of the act, so as to exempt it from the tax imposed by section 3 thereof, it is not believed that it would become taxable thereunder merely because the person making the tender failed to live up to his obligations and tendered undeliverable cotton. His failure to fulfill his contract in such case is a matter which would have to be adjusted by the parties themselves either amicably or by action in the court. In this connection your attention is called to Treasury Decision No. 2177, dated March 15, 1915.

It is suggested that much of the difficulty you describe would be obviated if a rule were adopted by the exchange, and made a part of section 5 contracts entered into thereon, to the effect that payment to the receiver of all or a part of the money be withheld, or that it be put in trust, to be paid over as the interest of the parties appear, after determination of the true grade, or quality, or length of staple of the cotton in dispute.

Very truly, yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

APRIL 7, 1915.

Authority to pass on presence of foreign matter in cotton.

6.

DEAR SIRS: I wish to acknowledge the receipt of your letter of the 22d ultimo, prompt reply to which has been delayed on account of my absence from the city, in which you request advice as to the effect of sand on the classification of the higher grades of cotton, such as Good Middling, or Middling, in case there is not sufficient sand to reduce the cotton in value below the value of Good Ordinary, but there is enough to reduce its value materially, such as to that of Strict Low Middling, or Low Middling, or Strict Good Ordinary, or Good Ordinary.

In reply permit me to say that in passing upon disputes under the United States Cotton Futures Act the question of the sandy character of cotton is regarded as independent of the question of its grade. In other words, cotton which has all the grade characteristics of Middling cotton would be classed as Middling, no matter whether it contained a perceptible quantity of sand or not. The question of the sandy character of cotton is therefore one of quality and not of grade.

No specific mention of the sandy character of cotton is made in the United States Cotton Futures Act. However, by the terms of the fifth subdivision of section 5 of this Act cotton that is reduced in value below that of Good Ordinary because of the presence of extraneous matter, which includes sand, is not deliverable under a section 5 contract.

This department of course is not authorized to determine whether any given amount of sand is sufficient to preclude the cotton from delivery under a section 5 contract, that being a question which must be determined by the parties themselves. It may be, however, that the exchange rules which are made a part of a section 5 contract prohibit the delivery of cotton if it contains a less quantity of sand than that which would reduce its value below the value of Good Ordinary, or that they provide for deductions in price on account of sand, so that the determination of the amount of sand would become material to the parties aside from the question as to whether there is enough to reduce the value of the cotton below that of Good Ordinary. It is believed, therefore, that the department should pass upon any disputed question of fact referred to it regarding the sandy character of cotton tendered under a section 5 contract. Any party should be able to state clearly the precise question which is in dispute, and which he desires passed upon by the Secretary of Agriculture, as to the amount of sand in the cotton, and the department is authorized to determine whether any claimed amount of sand is contained in the cotton or not.

You call attention to section 42 and to paragraph D of section 45 of the by-laws of the New York Cotton Exchange. The former prohibits the delivery of cotton containing an excess of sand, and the latter provides that the classification committee and the appeal committee on classification shall take sand into consideration in determining the grade of the cotton. It appears that the second rule to which you refer is contrary to the practice of this department in passing upon disputes since, as stated above, the sandy character of the cotton is determined as a quality independently of its grade. The term "excess of sand" seems to state a conclusion rather than a fact and may vary in meaning according to the view of the particular individual construing it. However, if it has such a definite meaning in the trade that it clearly indicates to any one familiar with trade practices the proportion of sand which in every case constitutes an "excess" it is believed that the question could be referred to and passed upon by the department in the language of that term. If this term has not such a definite meaning, the party referring the question should define in his claim what he considers to be an excess of sand, as, for instance, that the cotton is reduced in value one grade on account of sand, or whatever his claim may be.

Trusting that this satisfactorily answers your inquiry, I am,

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MAY 1, 1915.

7.

GENTLEMEN: Your letter of May 14 is received.

It appears that under the rules of the New York Cotton Exchange all bales of cotton that "show an excess of seed, sand, or dirt" are regarded as unmerchantable and are excluded from delivery on future contracts made on that exchange. You point out that under the terms of subdivision 5 of section 5 of the United States Cotton Futures Act cotton that, because of the presence of extraneous matter (which includes seed, sand, and dirt), is reduced in value below that of Good Ordinary is excluded from delivery on a section 5 contract; but that there is no provision in the Act that excludes from delivery on such contracts cotton that contains a quantity of seed, sand, or dirt less than that which would reduce its value below that of Good Ordinary but sufficient to reduce its value materially or make it unmerchantable. You contend that a party to a section 5 contract has no right against the objection of the other party to refer to the Secretary of Agriculture for determination the question as to whether any cotton tendered under the contract contains a certain quantity of seed, sand, or dirt less than that which would reduce its value below that of Good Ordinary, for the reason that there is no provision covering that question in subdivision 5 of section 5, and the right to refer disputes under the Act extends only to questions of grade or quality or length of staple specified in that subdivision. My opinion in the matter is requested.

It is believed that whenever there is a dispute between the person making the tender and the person receiving the same as to the grade or quality or length of staple of any cotton tendered under a section 5 contract, either party has the right to refer any such question to the Secretary of Agriculture for determination, whether the question is one specifically raised by any provision of subdivision 5 of section 5 of the Act, or is one that arises independently of the language of that subdivision. In other words, it is my opinion that the right and authority conferred by subdivision 7 of section 5 are not limited to a determination of questions of grade, quality, and length of staple specified in subdivision 5 of section 5, but are broad enough to include any other question of fact as to the grade or quality or length of staple of the cotton tendered under a section 5 contract when disputed by the parties thereto.

Thus if there be a bona fide dispute between the person making the tender and the person receiving the same as to whether any cotton tendered under a section 5 contract contains a certain amount of seed, sand, or dirt, but not enough to reduce it in value below that of Good Ordinary, it is my view that either party would have the right, even against the objection of the other party, to refer the question to the Secretary of Agriculture for determination.

This department requires, however, that any question as to the amount of the seed, sand, or dirt in cotton, or any other question referred to the Secretary of Agriculture under the act, be framed in definite language and not be stated in the form of a conclusion or left open to doubtful construction. For instance, the mere claim that cotton shows an excess of seed, sand, or dirt would not be sufficiently definite to enable this department to pass upon the question of fact involved, since there appears to be no established understanding in the trade as to what constitutes an excess of seed, sand, or dirt, and what one person in the trade would regard as an excess another might not so regard. In such case, the parties in specifying their claim should state the amount of seed, sand, or dirt which they consider to be in excess, so that this department may understand and be enabled to pass upon the exact question of fact involved.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MAY 18, 1915.

TREATMENT OF ALLEGED FICTITIOUS DISPUTES.

8.

GENTLEMEN: Your letter of May 15, 1915, is received.

It appears that certain cotton belonging to you has been tendered on future contracts made on the New York Cotton Exchange according to the classification of the exchange classification committee, but that the receivers have referred to this department for decision the question of its grade, arbitrarily claiming that each bale is one grade lower than the class of the exchange committee. You contend that the receivers had no real dispute regarding this cotton, and call attention to the trouble and expense that have been imposed upon you on account of the reference of the alleged disputes to the Secretary of Agriculture.

Either party to a contract made in conformity with section 5 of the United States Cotton Futures Act may, as a matter of right, in accordance with the seventh subdivision of that section and the regulations prescribed pursuant to the Act, refer to the Secretary of Agriculture a bona fide dispute arising under that contract between the parties thereto as to the grade, quality, or length of staple of the cotton tendered. It is believed, however, that it was not the intention of the Act that the Secretary of Agriculture should pass upon fictitious disputes or perform the functions of a classification committee and classify all cotton tendered on section 5 contracts. On the contrary, it is the view of the department that it was the intention of the Act to provide in the Secretary of Agriculture an impartial tribunal to determine, as an ultimate recourse, questions of fact actually and honestly disputed by the parties to section 5 contracts as to the grade, or quality, or length of staple of any cotton tendered thereon. If this intention, as last stated, is carried out, it would seem that such questions would be referred to the Secretary of Agriculture only in occasional instances, such as in case of bona fide grievance against the classification of the exchange committee, or against the classification of the deliverer himself, as set out in the notice or certificate accompanying his tender.

The facts stated in the cases referred to by you point to the conclusion that the receivers may not have entertained a bona fide dispute regarding the grade of all the cotton tendered. However, since it appears that the Act has been in operation only three months, that new standards for grade have been established, and that there is still uncertainty in the trade as to how the Secretary of Agriculture may classify cotton referred to him, there is reasonable ground to believe that a receiver might honestly question any tender made to him until he has become accustomed to the new classification. The department, therefore, feels disposed to be liberal in entertaining disputes at this time, at least until the operation of the Act becomes better established. However, the department will take note of all the facts in any case, and if it becomes convinced that any alleged dispute is referred to the Secretary merely for the purpose of delaying settlement of a contract, or of obstructing delivery thereon, and not because the complainant honestly disputes the grade, or quality, or length of staple of the cotton tendered, the department will feel free to dismiss the alleged dispute without determining it, or to take such other action as may be warranted to carry out what it conceives to be the intention of the Act.

The Secretary of Agriculture has no general power of administration under the United States Cotton Futures Act. His functions thereunder are strictly limited, his chief duty being to determine disputes as to the grade, or quality, or length of staple of cotton referred to him, in accordance with the seventh subdivision of section 5. Many of the difficulties that may arise at first in the operation of the Act must be met by the action of the exchanges and the trade in general, and will, it is believed, be eliminated if they properly adapt their practices to its provisions.

Very truly, yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MAY 20, 1915.

TRANSACTIONS EXEMPT FROM TAXATION.

9.

SIR: Your letter of February 25 addressed to this department has been referred to this office for attention and reply. You submit nine forms of confirmations of sales, representing hypothetical trades in cotton and ask to be advised if these contracts conform to the United States Cotton Futures Act, and, if not, that the particulars in which they conflict with the act be pointed out.

Briefly stated, the parts of the forms necessary to be considered here are as follows:

1. Sale made by you to ——— of 500 bales of Good Middling cotton for shipment in 30 days, arbitration, if any, on New York Cotton Exchange classification.

2. Sale made by you through ——— to ——— of 1,000 bales Strict Middling cotton for shipment at the rate of 200 bales monthly, arbitration to be based on Revised New England Terms.

3. Sale made by you to ——— of 200 bales of cotton to equal type marked "Rose," for shipment 100 bales in 30 days and 100 bales in 60 days, on New York Cotton Exchange arbitration.

4. Sale made by you to ——— of 100 bales Good Middling cotton, for shipment 60 days after date, arbitration, if any, on New England terms.

5. Sale made by you through ——— to ——— of 100 bales Strict Middling, North Georgia cotton, for prompt shipment, arbitration, if any, under Carolina Mill Rules 1914.

6. Sale made by you to ——— of 500 bales Liverpool Middling cotton, for shipment last week of March, 1915, subject to Liverpool arbitration and classification.

7. Sale made by you to ———, Liverpool, England, of 500 bales Liverpool Middling cotton, for April sailing, subject to Liverpool arbitration and classification.

8. Sale made by you to ———, Liverpool, England, of 1,000 bales of Good Middling cotton, for April sailing, price to be fixed one-fourth penny on May–June or on before April 1, 1915, subject to Liverpool classification and arbitration.

9. Sale made by you to ———, Liverpool, England, of 500 bales of Fully Middling cotton, for April shipment, subject to Liverpool arbitration and classification.

The questions which you apparently intend to raise, based on these various forms, may be answered without discussing each separately.

Section 3 of the United States Cotton Futures Act of August 18, 1914, imposes upon contracts of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business a tax of 2 cents for each pound of cotton involved in such contracts. If, however, the contract complies with the conditions prescribed by section 5 for what are commonly known as "basis" contracts, or with the conditions prescribed by section 10 for what are commonly referred to as "specific" contracts, it will be exempt from taxation.

Section 11 of the act imposes on each order transmitted, or directed or authorized to be transmitted, by any person within the United States, for the making of any contract of sale of cotton grown in the United States for future delivery in cases in which the contract of sale is or is to be made at, on, or in any exchange, board of trade, or similar institution or place of business in any foreign country, a tax of 2 cents for each pound of the cotton so ordered to be bought or sold under such contract, but this section contains a proviso which exempts such orders from the tax if the contracts made in pursuance thereof comply either with the conditions specified in the first, second, third, fourth, fifth, and sixth subdivisions of section 5, or with all the conditions specified in section 10 of the Act.

In addition, section 10 expressly provides that the Act shall not be construed to impose a tax on any sale of spot cotton.

Thus, it is apparent that, in order that a contract made in this country may be subject to the taxing provisions of the Act, it must (1) be a contract of sale of cotton for future delivery, and (2) be made at, on, or in any exchange, board of trade, or similar

institution or place of business. The forms of confirmations which you submit, and which are numbered above from 1 to 6, inclusive, indicate contracts of sale made in this country and, with the exception of No. 5, represent contracts of sale of cotton for future delivery, but it does not appear that they are made at or through the medium or facilities of a common place of business, association, or organization provided for that purpose. On the contrary, they seem to have been entered into upon direct negotiations between the seller or his agent in one locality and the purchaser or his agent in a different locality. Under these circumstances, it is believed that the particular transactions in question are not made at, on, or in any exchange, board of trade, or similar institution or place of business within the meaning of the act, and are, therefore, not taxable under its provisions. The mere fact that the cotton is described as of the grade of Liverpool Middling, or that the arbitration or classification under the contract is subject to Liverpool arbitration and classification, New York Cotton Exchange classification, New England Terms, or Carolina Mill Rules 1914, if the contract is not otherwise subject to the provisions of the act as above stated, does not subject the contract to the tax imposed by the Act.

With reference to section 11 of the act, you will note that there must (1) be an order transmitted, or directed or authorized to be transmitted, by a person within the United States (2) for the making of a contract of sale of cotton grown in the United States (3) for future delivery, and (4) made at, on, or in any exchange, board of trade, or similar institution or place of business in a foreign country.

The forms of confirmations numbered above 7, 8, and 9 represent sales made by you in the United States of actual cotton grown (presumably) in the United States for future delivery at Liverpool and Manchester, England, but appear to have been sales made directly to the purchaser and do not appear to constitute in any way an order for the making of a contract of sale of cotton at, on, or in any exchange, board of trade, or similar institution or place of business in Liverpool or elsewhere. If this be the case, these sales are not taxable under the provisions of the Act, notwithstanding the fact that they are made subject to Liverpool arbitration and classification, and in the case of No. 8, that the price is fixed with reference to May–June futures.

Having stated that these sales described by you do not appear to be subject to the provisions of the Act, it is not necessary to discuss the question whether any of the rules or terms upon which the arbitration or classification of cotton thereunder may be based would in any way conflict with the provisions of the Act. To do so would involve a detailed examination of all the various rules referred to.

From time to time various questions arising under the United States Cotton Futures Act are answered or discussed in our published Service and Regulatory Announcements. In view of the possibility that you may not be receiving them, I am inclosing herewith copies of the three that have been issued so far. Subsequent issues of Service and Regulatory Announcements will be sent to you from time to time.

If further information is desired by you, your inquiry will be given attention as opportunity presents itself.

Respectfully,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MARCH 24, 1915.

TENDER OF UNDELIVERABLE COTTON—SUGGESTIONS FOR COTTON EXCHANGES.

10.

GENTLEMEN: A statement purporting to have been issued by your firm has been called to my attention. It is to the effect that various difficulties and delays that have been encountered by receivers in taking deliveries on section 5 contracts made on the New York Cotton Exchange, and in closing up such contracts, are due to the exercise of the right of the seller under the United States Cotton Futures Act to tender cotton on his own notice or certificate.

As set forth in various letters of this department, published in Service and Regulatory Announcements of this office, it is believed that the seller under a section 5 contract has the right to tender cotton on his own notice or certificate. While he may use his own notice or certificate in making his tender, yet one of the principal obligations of the seller under every section 5 contract is to deliver only cotton that is above the minimum requirements as to grade, quality, and length of staple specified in subdivision 5 of section 5 of the act. He has no right under the contract to deliver, and the buyer is not obligated to accept, any cotton that does not satisfy such requirements.

If the seller should make a careful endeavor to tender only cotton that he is obligated and has a right to deliver on his section 5 contract it would seem that the buyer would not be prejudiced and would have no reason to complain of hardship or undue delay on account of the exercise by the seller of his right to tender on his own notice or certificate. However, if the seller tenders a large proportion of cotton of a grade, quality, or length of staple obviously prohibited from being delivered under the contract unnecessary burden and delay are cast upon the receiver. In other words, it is believed that by far the greater part of the hardships and delays complained of in receiving cotton on contract have been due not to the proper exercise of the right of the seller to tender on his own notice or certificate, but to the misuse or abuse of this right and to careless or deliberate disregard of the contract obligations to deliver only cotton above certain requirements as to grade, quality, and length of staple.

The situation referred to, it is believed, can and should be controlled and remedied by the exchange itself. It could adopt if necessary and enforce such reasonable disciplinary measures as would compel its members to live up to their contract obligations regarding deliveries. In order to discourage all tenders of obviously undeliverable cotton it is suggested that a rule might be adopted penalizing the seller for tendering cotton which is found by the Secretary of Agriculture, in a dispute referred to him regarding the same, to be of a grade, quality, or length of staple that makes it undeliverable under a section 5 contract. It would seem also that there would be less delay in closing up these contracts if replacements were not allowed or if only one replacement within a limited period were permitted for each contract.

Very truly, yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

MAY 15, 1915.

NO FORMAL FINDINGS TO BE ISSUED EXCEPT ON QUESTIONS REFERRED TO SECRETARY OF AGRICULTURE FOR DETERMINATION.

11.

GENTLEMEN: I have your letter of the 8th instant in regard to lot No. ——, tags Nos. —— and ——, included in disputes Nos. — and —, and have investigated the matter carefully.

I find in dispute No. —, in which you were complainants and ———— were respondents, that your claim with reference to these bales was stated under the head of "Class of ——— & Company" and was "untenderable—immature staple having appearance of regins," but there was no claim that the cotton was less than seven-eighths inch in length of staple, the column headed "Staple" being left blank, although in regard to other bales in the dispute you did make the claim "Under seven-eighths inch." As dispute No. — arose out of a tender made on a contract entered into prior to February 18, 1915, no formal findings were issued by the Secretary of Agriculture, but a memorandum of conclusions was sent you by this office, in which the statement was made in regard to these bales, "Not immature staple—no appearance of reginned."

In dispute No. —, in which ——— & Company were complainants and you were respondents, the complainants claimed that these bales were less than seven-eighths inch and the examiners passed upon that question. Dispute No. — arose out of a contract entered into after February 18, 1915, subject to the United States Cotton Futures Act. Formal findings of the Secretary of Agriculture were issued stating that these bales are, as you say, "Less than seven-eighths inch in length of staple."

You will see from the foregoing that the question of length of staple was not referred for determination in dispute No. —, but that in dispute No. — it was referred to the Secretary of Agriculture. As the determination whether cotton is mature or not does not involve the determination of length of staple, and as mature cotton may be (it is in these cases) less than seven-eighths inch in length of staple, you will readily understand that there is no inconsistency in the conclusions of the examiners in the two disputes.

As you know, it is the opinion of this department that the United States Cotton Futures Act places upon the Secretary of Agriculture the duty of passing only upon those questions which are referred to him for determination, and that his findings will not be accepted in the courts of the United States as prima facie evidence of the true grade, length of staple, or quality of the cotton except upon such questions. These disputes were determined accordingly.

This office is unable to advise you as to your remedy in respect to these bales, that being a matter to be determined from your contract and the rules and regulations which are made a part of it or by agreement between the parties.

Very truly yours,

CHARLES J. BRAND,
Chief, Office of Markets and Rural Organization.

JUNE 10, 1915.

The following forms have been issued by the Treasury Department:

12.

TREASURY DECISION.

(T. D. 2216.)

UNITED STATES COTTON FUTURES ACT.

Form book to be used in recording contracts of sale of cotton for future delivery.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 10, 1915.

Article 18 of Regulations No. 36 prescribes that persons who make contracts of sale of cotton for future delivery at, on, or in any exchange, board of trade, or similar institution or place of business, shall keep a record showing information therein specified.

For the purpose of uniformity and to enable United States cotton futures agents to check up readily such information the following forms are prescribed:

FORM NO. 1.

.....
(Name and address of firm keeping the record.)

Purchases for ..... delivery.

The following transactions are made on the basis of Middling and subject to United States Cotton Futures Act, section 5, unless otherwise stated:

Date.	Party or firm from whom bought.	Address.	(1) Reference number.	(2) Bales.	Price.	(1) Customer.	(3) Domestic or foreign.	Settlement.		Tax, if any.
								Date.	Method.	

[OBVERSE PAGE.]

.....
(Name and address of firm keeping the record.)

Sales for ..... delivery.

The following transactions are made on the basis of Middling and subject to United States Cotton Futures Act, section 5, unless otherwise stated:

Date.	Party or firm to whom sold.	Address.	(1) Reference number.	(2) Bales.	Price.	(1) Customer.	(3) Domestic or foreign.	Settlement.		Tax, if any.
								Date.	Method.	

(1) Filling in of these columns optional.
(2) Transactions can be entered in 100-bale lots to a line; 50 lines to the page; 100 may be printed in on each line if so desired.
(3) Domestic to indicate domestic business. Foreign to indicate foreign business.

FORM NO. 2.

The following transactions are made on the basis of grade, type, or description, and subject to the United States Cotton Futures Act, section 10, unless otherwise stated:

.....
(Name and address of firm keeping records.)

Date.	Bought from—		Bales cotton.	Description.	Price.	Terms.	Time of shipment or delivery.	Delivery reference.	Tax paid or if exempt.
	Name.	Address.							

[OBVERSE PAGE.]

The following transactions are made on the basis of grade, type, or description, and subject to the United States Cotton Futures Act, section 10, unless otherwise stated:

.....
(Name and address of firm keeping records.)

Date.	Sold to—		Bales cotton.	Description.	Price.	Terms.	Time of shipment or delivery.	Delivery reference.	Tax paid or if exempt.
	Name.	Address.							

FORM NO. 3.

Orders sent to .....
(Name of person or firm.) (Address.)

The following orders were sent after February 17, 1915, for the making of contracts for purchase or sale of cotton grown in the United States for future delivery on the ..... Cotton Exchange:

Date order sent.	To buy or to sell.	Number of—		Time specified for delivery.	Specified price per pound or kilo.	Basis grade.	Grade, type, or description.	Date of delivery or settlement.	Method of actual fulfilment or settlement.
		Bales.	Pounds or kilos.						

[OBVERSE PAGE.]

.....
(Name and address of sender keeping the record.)

Tax paid (if any).	Exempt from tax.	Executions.					Remarks.
		Bought.		Sold.		Unexecuted.	
		Date.	Price.	Date.	Price.		

Form No. 1 will be used to give information regarding all contracts made upon an exchange subject to the United States Cotton Futures Act, section 5, unless otherwise stated; Form No. 2 will be used to cover contracts subject to the United States Cotton Futures Act, section 10, unless otherwise stated; and Form No. 3 will be used to cover orders sent for execution upon foreign exchanges. A stated number of lines, say 50 to the page, should be adopted, so that the volume of business can be reckoned easily. There would be no objection if the firms who use these forms wish to incorporate additional columns which would be of use to them, such columns to be placed in such positions as not to interfere with the continuity of the columns and headings prescribed. These forms will not be supplied by the department, but must be secured by the persons or firms keeping record from blank-book manufacturers. Immediate use of these forms will not be insisted upon, except in cases where the records now kept do not readily furnish the desired information, but such forms must be used in all cases as soon as the supply of books and records now on hand is exhausted.

W. G. MCADOO,
Secretary of the Treasury.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915